

# Parent Rights Under IDEA

Individual with Disabilities Education Act

October 2011

### Area Board 3 on Developmental Disabilities

Advocating for Families and Individuals with Developmental Disabilities Alpine-Colusa-El Dorado-Nevada-Placer-Sacramento-Sierra-Sutter-Yolo-Yuba

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#### Their Role As Advocates

Most often when families contact the Area Board they feel as though that they are in a battle with their school district, regional centers, mental health or other services agencies. IEP meetings can become adversarial when parents feel they do not have a voice, are incompetent, and unable to help their own child. Typically these feelings develop when there is a breakdown in communication be the parents and professional staff. Professional staff often forget how uncomfortable most parents feel in a formal meetings with professionals. Parents often feel they are 'just the parents' compared to the professionals. Families are fearful and come to IEP, IPP, meetings feeling that they won't get what they want and that the district staff isn't telling them everything. Michael and Lynne have a strong belief that their role as advocates is not to be seen as adversarial to the IEP, and or IPP process. In fact, they believe their role as effective advocates is to assist in establishing collaboration and providing the team with positive facilitation for families and school district staff. As advocates Michael and Lynne's approach is to meet with families in their office, to help parents focus on what the issues are and solutions for resolving those concerns. They feel that it is not their job to speak for families but, in fact assist them in speaking on behalf of their child. To this end, Michael and Lynne spend a great deal of time assisting families in understanding the IEP, or IPP process. They discuss the needs of the child, what the evaluations mean, looking at appropriate goals and objectives, what would be appropriate supports and services, and finally placement options for their child

#### Speaker's Biographies

Michael Rosenberg is Executive Director of Developmental Disabilities Area Board III.

The Area Board provides advocacy services for more than 1.6 million people, training opportunities to the community, and represents parents who have children in special education as well as families and adults served by the regional center system. Michael has helped countless numbers of families achieve success by being an advocate, negotiator as well as lecturing in the areas of education, community and family support, and legislation. "Mr. Resemberg has spent more than two decades assisting families in identifying and assuring appropriate services for children and adults.

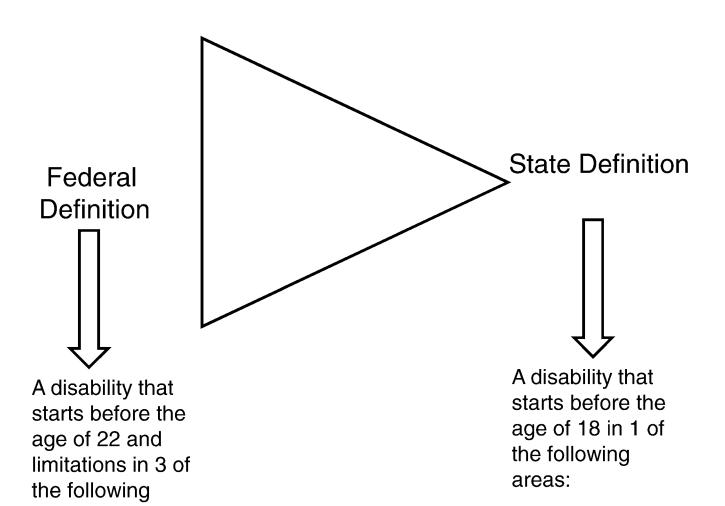
Lynne Castellucci is an Advocate for Developmental Disabilities Area Board III, focusing on families with children in special education and individuals served through the regional center systems. Lynne also provides parents and professional training and serves as a community resource for families. Prior to working for the Area Board, Lynne worked with a national non-profit parent support group. She started a chapter and provided seminars on ADHD parents and professionals. Lynne also served as board president for Northern California's Children's Therapy Center.

### Advocacy: A Crucial Service

Advocacy should not be confused with lobbying. Lobbying, as defined by the IRS, involves attempts to influence legislation at the local, state, or federal level.

Advocacy covers a range of activities broad enough to include just about everyone, in just about any kind of setting. Advocacy means to speak up, to plead the case of another, or to champion a cause. For nonprofit organizations, this means speaking out on behalf of the people they serve, and asking people to help in carrying out the organization's mission. Examples of advocacy include: speaking out about the rights or benefits to which someone is entitled; or taking action to ensure that institutions work the way they should.

Lobbying always involves advocacy. But advocacy doesn't always involve lobbying.



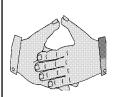
Look after yourself

areas:

- Talk to and understand other people
- To learn and remember new things
- To get around
- To live on your own
- To manage your own money
- To make decisions

- Intellectual Disabilities
- Epilepsy (seizures)
- Cerebral Palsy
- Autism
- Conditions similar to Intellectual Disabilities

Who we serve ←





### Area Boards on Developmental Disabilities

There are 13 Area Boards in the State of California. Area Boards make sure that the rights of people with developmental disabilities are protected.



### Things Area Boards do:

- Protect and advocate for people's rights.
- 2. Provide education and training.
- Help change or make new laws.
- 2. Help people work together in the community.
- 3. Support self-advocacy.
- 4. Show and talk about new ways of providing services and supports.





### **Dreams for Area Board 3**







## **Vision Statement**

Individuals and their families will live full inclusive lives with assurance that fundamental needs are met, quality services provided and rights championed, resulting in lives rich in opportunity, guided by their hopes and their dreams.









## **Mission Statement**

Area Board advocates for the legal, civil and service rights of individuals and their families. We are representative of the community, embracing and promoting the principles and practices of inclusion. Area Board 3:

- •Works to ensure the provision of quality services by monitoring agencies and the supports that people receive.
- •Advocates for, and facilitates systemic change, by building partnerships with organizations that support and share our vision.
- •Promotes, facilitates and supports self advocacy in local communities.
- •Provides direct advocacy to individuals and families, empowering them through representation and the development of information and training opportunities.



#### Timelines for Assessment and IEP

#### Child Referred for Assessment

"Referral for assessment" means any written request for assessment to identify an individual with exceptional needs made by a parent, teacher, or other service provider\_

Within 15 calendar days district must give parent proposed assessment plan The proposed assessment plan given to parents shall meet all the following requirements:

- 1. Be in language easily understood by the general public.
- 2. Be provided in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible.
- 3. Explain each type of assessment instrument to be administered, the purpose of the instrument, and the professional personnel responsible for the administration and interpretation of the instrument.
- 4. Fully explain the facts which make an assessment necessary or desirable.
- 5. State that no educational placement will result from the assessment without the consent of the parent.

Parent must give written consent to conduct assessment: Parent has 15 calendar days to arrive at a decision

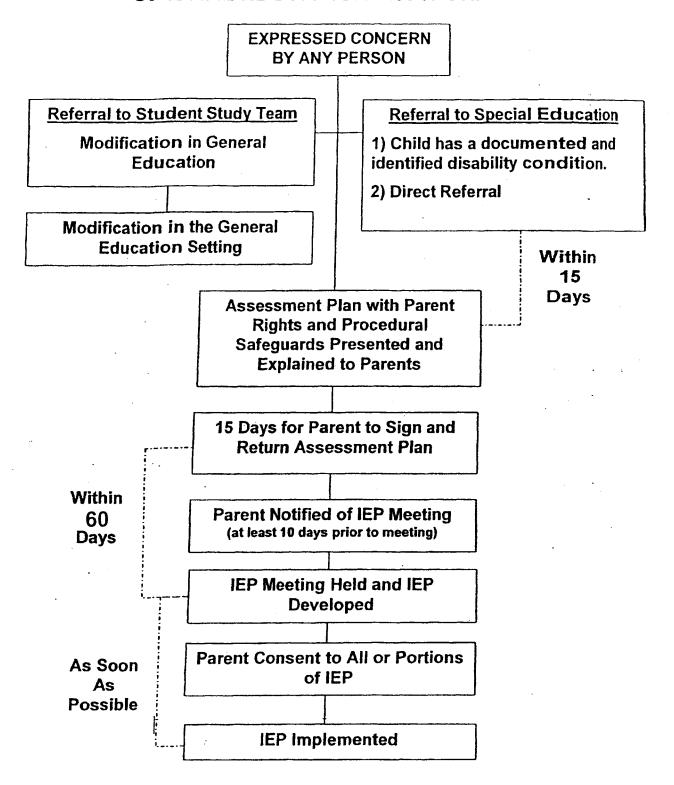
Written parental consent shall be obtained before any assessment of the pupil is conducted unless the public education agency prevails in a due process hearing relating to such assessment. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of such consent.

Assessment completed and IEP developed within 60-calendar days of receipt of parent's written consent for assessment

It is expected that a pupil's IEP will be *implemented immediately* following the IEP *meeting*An exception to this would be (1) when the meetings occur during the summer or a vacation period, or
(2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

An individualized education program shall be developed within a total time not to exceed 60 days, not counting days in July and August, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension. However, an individualized education program shall be developed within 30 days after the commencement of the subsequent regular school year for each pupil for whom a referral has been made 20 days or less prior to the end of the regular school year.

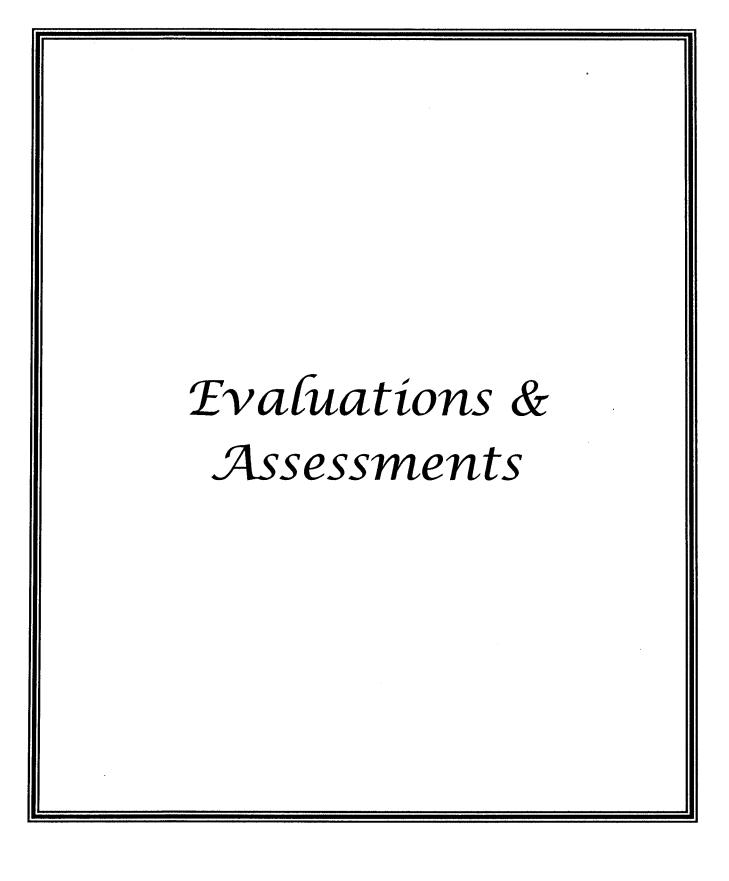
#### SPECIAL EDUCATION FLOW CHART



#### PROVISION OF ASSESSMENT PLAN

THE LAW	Examples
The District must provide a proposed written assessment plan to a parent/guardian within 15 days of the referral for assessment not counting days between the pupil's regular school sessions or terms of days of school vacation in excess of five school days. With school vacations in excess of five school days, the 15-day time line recommences on the date that the pupil's regular school days reconvene. (Ed. Code, § 56321(a).)	If the District received a referral on June 3, 2006 (fourteen days before school ends), then the assessment plan must be developed by August 29, 2006 (two days into the next school year which begins August 28, 2006).  If the District receives a referral on December 15, 2006 (Winter Break is December 16, 2006 — January 1, 2007) then the proposed assessment plan is due on January 16, 2007. (Vacations in excess of five school days are excluded from the 15-day time line.)
EXCEPTION NUMBER ONE	
Parent may agree in writing to extend the 15-day time line. (Ed. Code, § 56321(a).)  EXCEPTION NUMBER TWO  If a referral is made 10 days or less prior to the	Example  If the District received a referral on June 9, 2006
end of the regular school year, the assessment plan shall be developed within 10 days after the commencement of the regular school year. (Assessment Plan must be developed by September 7, 2006 for all referrals received between June 7 - June 16, 2006.). (Ed. Code, § 56321(a).)	(eight days before the last day of school which is June 16, 2006), then the assessment plan must be developed by September 7, 2006 (ten days after the first day of school for the 2006-07 school year).
REFERRALS RECEIVED DURING SUMMER June 17 — August 27, 2006	
Assessment plan must be provided to parent/guardian by September 12, 2006 (15 days after start of school year on August 28, 2006). (Ed. Code, § 56321(a).)	

60 day Calendar days



#### **EVALUATION**

- 1. The District will conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related services, prior to making an initial placement of the student in regular or special education, and prior to any significant change in placement. 34 C.F.R. §104.35(a).
- 2. Evaluation procedures will ensure that:
  - a. tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
  - b. tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those designed to provide a general intelligence quotient;
  - c. tests are selected and administered to ensure that, when the student has impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude, achievement, or whatever the test purports to measure, rather than reflecting the student's impairment (except where the test is intended to measure the impairment). 34 C.F.R. §104.35(b)
- 3. In interpreting evaluation data and in making decisions concerning placement and services, District staff will:
  - draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
  - b. ensure that information obtained from all such sources is documented and carefully considered; 34 C.F.R. §104.35(c)
- 4. Decision concerning placement and services will be made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the options for placement and services. 34 C.F.R. § 104.35
- 5. Students who are provided special education and/or related services will be periodically reevaluated. 34 C.F.R. § 104.35(d).

### Sample Letter for Assessment

Your Address

		Date
School District Name Director of Special Education's Name Address		
Dear Director of Special Education:		
l am the parent of grade grade Depression, Learning Disabilities, etc.) Since been raising concerns about (his) (her) academ and may need special education services. I am the disciplinary team evaluation to determine if and or related services under both IDEA (including accordance with the U.S. Department of Education regulations of this state. I hereby successful in school	nic performance and behavior. It berefore requesting a multi- ng the IDEA "other health impain cation Policy memorandum da	entered school, teachers have My child is not doing well in school is eligible for special education red" category) and Section 504, in ter September 15, 1991, plus the
I look forward to receiving an assessment plan with education for		ou to ensure a successful
Sincerely,		

Note: This is meant to be a sample which may of course need modification. Please re-type this letter, always keep a copy of written correspondence to school, and enter on your calendar when the 15 days is due. The 15 day period includes weekends, most holidays, except off track time, major holiday, and summer vacation. Keep in mind the district has 60 days from the point you sign the assessment plan to complete evaluations and hold an IEP meeting. Upon signing the assessment plan include a statement requesting copies of all assessments 5 days prior to the IEP meeting.

### Sample Letter To Request A New IEP Meeting Your Address

Date		
School District Name Director of Special Education's Name Address Education		
I am the parent of is a student in the grad (504 Accommodation Plan) since about (e.g. am therefore requesting the IEP team reconventure.  Optional: I am working with an advocate/attorney give specific dates you have arranged with their confirm a meeting date.  I look forward to meeting within the next thirty	/ (name) and request the distri office. Make sure to follow-u <sub>l</sub>	ict coordinate a meeting date with their officeo p with the district within a couple of days to
Sincerely,		
cc:		

Note: This is intended to be a sample which may of course need modification. Please retype this letter, and keep a copy for your records.



#### **COUNTY SELPA** ASSESSMENT PLAN

Date Parents Notific	ed:	J	
Nonfied by:	phone i	mail	conference
Date received by Dis	strict:		

he assessment listed below are recommended to help us individualize the educational needs of your child. Assessment tools will be explained to you. Testing

Student Name:	assessment. Please s	L BE GEORGE					-
Student Address:			······································	<u> </u>			
Social Security #:			Date of B	irth: _/	1	Age:	Gender:  Male Gr
Ethnic Background:	English	Migrant	Student's		Interpreter	School Info	
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AfrAmer. (600)	Learner	□ N <sub>0</sub>	Language:		□ No□Yes	Home School	
□ White (700)	(ELL):	□ Yes	D English				mendance
Other & code	□ No □ Yes		D Other				
Parent/Guardian Infort				TV VM			Wk. Pb. # ( )
Parent/Guardian Name(s)	);			Home Ph	#( /		7,274
Address (if different than	300vc)						
Resson(s) for this assessm  A referral has been made  The required 3-year ro-e  Other:	e to determine if your	child is eligib l's progress s	le for special o ad eligibility f	education seri in special edi	ication services is (		:
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							sults of the nesessment(s) finding
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omprehension, mathematic	a, calculation, muchen	natics reasonit	ng, and writter	expression.		d Education T	EZCRO
					Other:	Psychologist	
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casures help determine RE shoot. This may include in	rming this see as:est in	appropriate to	eacures, if acts	ropriste.			
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ed speech clearly and appro		,			□ Special	Education To	acher D General Education Teache
•					D Other.		
Motor Development: As	ssesses levels of coord	gret ai aoissai	e and small o	wscle activiti			acher School Psychologist
d/or visual perceptual skill					□ Genera	Education To	escher
					Other;	- 55	'almanadas Tanaka
Health: Assesses education	onally relevant, health,	, developmen	al and medica	d findings.		Nurse Li Spoi Education To	rial Education Teacher
Hearing and vision screen	ing is required for initi	al and 3- year	LC-CASTRSCOO	<b>s</b> .	D Other.	Fancaning 1	eacher
						Danie de la cier I	3 Special Education Teacher
Social/Emotional: Asses	ses level of social man	unity, social/c	motional adju	etincol, and	C School	Education To	acher
erpersonal skills.					C) Other	Dimination 1	
				ماائده ا		Education To	acher
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Review and consider any ependent assessments, and	LEXIN SPECIMENT IN UNITED IN	ration the ma	ent provides		☐ Special	Education To	acher D School Nurse
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					☐ School	Psychologist	
ier: 	ring loss on learning				☐ Speech	& Language S	Specialist
Measure the impact of hearing loss on learning.						Education Tea	
Manage the impact of their	Measure the impact of vision loss on learning.				☐ School		
Mercure the impact of Visit	Behavioral issues which impede his or her learning or that of others.				🗆 General	Education Tra	acher
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Prior to Referral for Assessment: Consultation and General Education Interventions by the Student Study Team process. If interventions are not enough to meet your child's needs in general education a special education assessment plan will be developed.

### WHAT HAPPENS WHEN I SIGN THE ASSESSMENT PLAN FORM?

l. Parent signs Assessment Plan date		Your child can't be assessed without your permission. All assessments must be completed and an Individualized Education Program (IEP) developed within 50 days of the date the signed assessment form is received by the district, not counting days of major school holidays and
2. Student is assessed by the school psychologist, Special Ed. Teacher and others as needed (i.e. Speech Therapist; APE Specialist)		The assessment normally takes 3-4 weeks. You may be contacted regarding your child's health & developmental history, your concerns, and other issues.
3. A meeting is held with parent(s) to go over assessment results on or before:  date		You will be asked to come to school for a meeting. You will find out how your child did on the assessment. A list of your child's needs should be developed at this meeting.
4. If assessments show student needs special help, parent will be asked to help develop the IEP. This meeting will be held on or before:	\$5.000 \$0.0000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.0000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.0000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.0000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.000 \$0.0000 \$0.0	If your child needs special help, an IEP will be developed at this meeting or at a later meeting. Your child cannot be placed in a special program without your permission.
5. Student receives Special Education services.	%	Your child may then receive help from Special Education teachers and/or other specialists as needed.
6. A review meeting with parent is held at school.		After your child has been in a Special Education program for one year, or sometimes sooner, you will be asked to come to a meeting so you and the Special Education teacher can review your child's progress.
CallPhone Num	ita:	if you have any questions

#### WHAT WILL THE REPORT(S) INCLUDE?

Although the particular components may vary, generally the assessment report(s) will include:

- 1. Background information, including developmental, health, and school history.
- 2. Summary and interpretation of actual test results.
- Recommendations for educational needs.
- 4. Relevant behavior and relationship of observed behavior to student's academic and social functioning.
- 5. For pupils with learning disabilities whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.
- 6. A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.
- 7. The need for specialized services, materials, and equipment for pupils with low incidence disabilities.
- 8. Should always include student's strengths and parent information.

## ARE THERE ADDITIONAL COMPONENTS REQUIRED IN THE REPORT DEPENDING ON THE SUSPECTED AREAS OF DISABILITY?

Yes. For example, additional components might include a vision report for the blind or visually impaired, a current audiogram for students who are hard of hearing or deaf and a medical report for students who have orthopedic impairments or traumatic brain injury. Often there are two categories which require additional assessment by a school district and they are ED (Emotional Disturbance) and OHI (Other Health Impaired).

#### HOW OFTEN WILL THESE ASSESSMENTS BE CONDUCTED?

A full evaluation must be completed prior to the student's initial enrollment in special education.

At least every 3 years a determination of what, if any, evaluation will be made of the students continued eligibility for special education.

#### ACCOMMODATIONS PROCEDURES AND GOALS

The following assessment continuum is provided to outline information that may be collected in the assessment/reassessment process. The personnel who assess the pupil shall prepare written reports regarding the results of each assessment.

#### STEP I - ENVIRONMENT VARIABLES

- 1. School Observation
  - Demands the learning environment places upon the child, including a description of cultural/ethnic variables.
  - b. Description of child's behavior, including modality, strengths, and learning strategies.
  - c. Child/teacher/peer interaction.
  - d. Teacher style (individual differences in approaches to the instructional task).
- 2. School History
  - a. Past education history, interventions, special services or programs and results, test scores (no more than two years old).
- 3. Interview with child, parent, and teacher
  - a. Leading to adjustment or modification of the regular school program, referral to other regular programs, alternatives or consultative provisions.

#### STEP II - EDUCATION ASSESSMENT

- Assessment of language and speech development.
- 2. Academic assessment math, reading, written language, general knowledge.
- 3. Vocational/career assessment (as appropriate).
- 4. Assessment of social/affective functioning.
- 5. Assess language dominance, as appropriate.
- Formal assessment of adaptive behavior, if applicable.



POUCHAKE BARTNESHP

**ACTIVITIES** 

IDEA-PART B FINAL REGULATIONS\* CHILDREN WITH "ADD/ADHD" (March 1999)

IDEA '97

RELATED INITIATIVES

Adding "ADD/ADHD" to the list of eligible conditions under "OHI."

DISCUSSION ROOMS

The definition of "child with a disability" in the

**PARTNERS** 

PMP LINKS

Part B regulations has been amended to add "attention deficit disorder" ("ADD") and "attention deficit hyperactivity disorder" ("ADHD") to the list of conditions that could render a child eligible for Part B services under the "other health impairment" ("OHI") category.

PMP SEARCH

SITE MAP

NASDSÉ HOME

Many children with ADD/ADHD have been eligible under Part B - consistent with the Department's long-standing policy related to serving these

In 1991, the Department issued a memorandum entitled "Clarification of Policy to Address the Needs of Children with [ADD] within General and/or Special Education," which was jointly signed by the Assistant Secretaries of OCR, OESE, and OSERS.

The substance of the 1991 policy clarification was included in the NPRM, and, specifically in Note 5 following \$300.7 (definition of "child with a disability") -- to ensure that school administrators, teachers, parents, and other members of the general public would be fully aware that some children with ADD/ADHD are eligible under Part B. (Adding that interpretation to the NPRM was consistent with the Department's plan to include all major long-term policy interpretations related to Part B in a single regulatory document, along with the new provisions added by the IDEA Amendments of 1997.)

The 1991 policy interpretation clarified that

· ALL CHILDREN WITH ADD/ADHD CLEARLY ARE NOT ELIGIBLE under Part B to receive special

education and related services — just as all children who have one or more of the other conditions listed under the "other health impairment" category are not necessarily eligible (e.g., children with a heart condition, asthma, diabetes, and rheumatic fever)."

- TO BE ELIGIBLE UNDER PART B, A CHILD WITH ADD/ADHD
   (as with all other children covered under this part) must meet a two-pronged test of eligibility (i.e.,
  - have a condition that meets one of the disability categories listed under \$300.7, and
  - need special education and related services because of that disability).
- CHILDREN WITH ADD/ADHD ARE A DIVERSE GROUP. Some children with ADD/ADHD may be eligible under other disability categories if they meet the criteria for those disabilities, while other children may not be eligible under Part B, but might qualify under section 504 of the Rehabilitation Act.

Department's 1991 policy memorandum not fully implemented.

From the public comments received on the NPRM related to ADD/ADHD (and the Department's experience in administering Part B), it is clear that the 1991 policy is not being fully and effectively implemented.

Ensuring that eligible children with ADD/ADHD receive Part B services.

To ensure that each child with ADD/ADHD who meets the eligibility criteria under Part B receives special education and related services in the same timely manner as other children with disabilities, it is important to

- add "ADD/ADHD" to the list of conditions that could render a child eligible under this part, and
- appropriately address (in Attachment 1 to the final regulations) the large number of comments received on this topic.

Clarifying "limited strength, vitality, or alertness" under "OHI."

The final regulations also clarify that the term "limited strength, vitality, or alertness" in the definition of "ONI" (when applied to children with ADD/ADHD) includes "a chillege Meightened alertness to environmental stimuli that results in limited

#### Eligibility Criteria - Emotionally Disturbed (ED)

The federal definition of Emotionally Disturbed requires that the individual exhibit one or more of the five criteria listed below. Furthermore, the characteristics must meet three limiting criteria: it must exist over a long period of time, to a marked degree and must adversely affect the individual's educational performance. Each of these conditions as it relates to is discussed below.

#### 1. An inability to learn which cannot be explained by intellectual, sensory or health factors.

Chad shows an ability to learn and has been capable of completing work and performing within academia as evidenced by his average to above academic scores. Despite behavioral and conduct issues Chad's achievement scores suggest he has continued to progress within his grade level despite his lack of effort in completing assignments. He does not meet the criteria for this characteristic.

#### 2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

Chad reports to have no difficulties making and keeping friends. Observations and teacher reports suggest he interacts well with peers and although he often aligns himself and engages with peers of negative influences, his interactions are appropriate and reflective of teenage interactions. He does not meet the criteria for this characteristic.

#### 3. Inappropriate types of behavior or feelings under normal circumstances.

Chad's overall behaviors reveal he often provides entertainment for his peers through attention seeking and engaging in defiant behaviors. Self reports, teacher reports and observations suggest Chad is capable of adhering to the rules of school/society if he so chooses to comply with the limitations of his environment. He does not meet the criteria for this characteristic.

#### 4. A general pervasive mood of unhappiness or depression.

Chad's mood/affect seems to be consistent with the events in his environment and/or the topic of conversation. He presents as a likable, happy young man who is capable of seeking enjoyment out of daily activities and positive peer interactions. His mood does not seem erratic or inconsistent with events as they occur in his daily life. And although there are reports of past depression/anxiety, it seems to have been more situational and not overt or detrimental to his daily functioning. He does not appear to meet this criteria.

#### 5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Based on observations and interview Chad's occasional avoidance of school is more likely related to his reported lack of interest in school. His reactions to personal and school problems do not seem to be of organic etymology, rather Chad chooses to miss school when he has the opportunity to not attend. He does not appear to meet this characteristic.

How much of a discrepancy must there be between a student's achievement and his or her intellectual ability for discrepancy to be "severe"?

Topic: Eligibility

Case name: Welton v. Liberty 53 Sch. Dist., (W.D. Mo. 2001).

Ruling: A U.S. District Court in Missouri backed an administrative hearing panel's determination that a high school student was eligible for services only on the basis of a diagnosed learning disability in the area of written expression. The parents unsuccessfully argued the student had disabilities in reading and math that were not addressed in his IEP.

**What it means:** (a)(2) requires that a student's discrepancy between achievement and intellectual ability be "severe" in order to be eligible for special education on the basis of having an SLD. However, neither the IDEA nor its regulations provide specific guidelines quantifying in any way the required degree of severity.

**summary**: The court agreed with the district's determination that the student did not require special education services in the areas of reading and mathematical calculation. It rejected the parents' position that a past diagnosis of a reading disability justified current services. Testimony from the student's teachers indicated that he generally performed well in reading classes and activities. Additionally, no teacher, other than a private tutor hired by the parents, believed the student had a disability in math calculation. He received passing grades in both algebra and geometry and subsequently progressed to algebra II class.

Although the court noted that objective testing results made the existence of a math-related disability a "closer question" than the reading issue, it observed that such testing "was only part of the equation." It found the teachers' testimony as to the absence of any disability to be credible.

34 CFR\_§ 300.541(a)(2) requires that a student's discrepancy be "severe" in order to be eligible for special education and related services on the basis of having an SLD. However, neither the IDEA nor its regulations provide specific guidelines quantifying in any way the required degree of severity—nor does the Department of Education in its policy letters\_ Thus, the determination of what constitutes a "severe" discrepancy is left to the discretion of the states, provided any guidelines adopted are consistent with the federal requirement for severity\_ A guideline is open to challenge as inconsistent if it is alleged to exclude students who should be considered eligible. For example, a state regulatory standard of 50 percent discrepancy between expected and actual achievement was held not too stringent, but was interpreted as the functional equivalent of the federal "severe" discrepancy standard and viewed as a qualitative rather than strictly quantitative standard\_ Board of Educ. of East Syracuse-Minoa Cent. Sch. Dist., 21 IDELR 1024 (SEA N.Y. 1994).

### Discrepancy "severe" Regulation 5 CCR 3030-Eligibility Criteria

(A) When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard

error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate.

How much between the student's achievement and his or her intellectual ability for the discrepancy to be "severe"? 34 C.F.R. §300.541(a)(2) requires that a student's discrepancy be "severe" in order to be eligible for special education and related services on the basis of having an SLD. However, neither the IDEA nor its regulations provide specific guidelines quantifying in any way the required degree of severity—nor does the Department of Education in its policy letters. Thus, the determination of what constitutes a "severe" discrepancy is left to the discretion of the states, provided any quidelines adopted are consistent with the federal requirement for severity. A guideline is open to challenge as inconsistent if it is alleged to exclude students who should he considered eligible. For example, a state regulatory standard of 50 percent discrepancy between expected and actual achievement was held not too stringent, but was interpreted as the functional equivalent of the federal "severe" discrepancy standard and viewed as a qualitative rather than strictly quantitative standard. Board of Educ. of East Syracuse-Minoa Cent. Sch. Dist., 21 IDELR 1024 (SEA N.Y. 1994).

On this matter, the Department of Education has stated that although an MDT may use a numeric formula to determine severity, the MDT ultimately must be able to override a purely mechanical application of the formula. Without such flexibility, a

### Independent Educational Evaluations

### What is an "independent educational evaluation"?

An independent educational evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the school district or other public agency responsible for the education of the student in question. 34 C.F.R. § 300.503(a)(3). Parents have an automatic right to obtain an IEE at any time during their child's education and to have the IEE considered by the school district in any decision made with respect to providing an educational program for that student. 34 C.F.R. § 300.503(c). Because a student's educational program and placement are premised upon the results of his or her evaluation, the right to obtain an IEE is essential for parents who suspect that the district's evaluation has not discerned the true nature of a student's disabilities and resulting needs. A frequent issue arising in connection with IEEs is when a parent may obtain an IEE at public expense and when he or she must pay for it as a private expense. 34 C.F.R. § 300.503(b) states the conditions under which a parent has a right to an IEE at public expense."

student may not receive the individualized evaluation that he or she is entitled to under the IDEA\_Letter to Murphy, EHLR 213:216 (OSERS 1989). An example of how an MDT must use an override when appropriate is found in Mt\_Diablo Unified School District, 1985-86 EHLR 507:193 (SEA Cal. 1985). In that case, a seventh grader was found to

have an SLD even though he did not have the "at least 23-point discrepancy" between his achievement and intelligence tests that the state regulations required for eligibility. The student had established by persuasive evidence that he had an SLD in math because his math skills were at a beginning fourth-grade level, despite remediation efforts, and there was no credible evidence of lack of effort.

Í	Learning Processes: A Diagnostic Framework				
	Copyright ©1998 Martha Lewis Kentfield				
Process	Definition	Tests Which Give Information			
Written Lan <sup>g</sup> ua <sup>g</sup> e Skills	Ability to organize and relate ideas in written form. Knowledge of writ- ten language mechanics skills.	* WIAT: Writing Composite  * Test of Written Language-Third Edition  * Test of Early Written Language-Second Edition (TEWL-2)  * WJ-R, Achievement: Written Language Subtests  * OWLS: Written Expression Scale			
Mathematics Skills	Ability to perform arithmetic computations and to solve problems involving mathematical concepts and reasoning.	* WIAT: Mathematics Composite  * Key Math-Revised (1997 Norms)  * WJ-R, Achievement: Mathematics Subtests  * K-TEA: Mathematics Composite (1997 Norms)  * WRAT-3: Arithmetic			
Physical Health and Development					
Visual Acuity	Keenness of vision	* Snellen Vision Screening * Titmus Test			
Auditory Acuity	Keenness of hearing	* Pure Tone Audiometric Screening * Tympanometry			
Health & Develop- mental History		* Goldstein Childhood History Form (Revised)  * Health & Developmental Interview  * Neurodevelopmental Exam			

Learning Processes: A Diagnostic Framework Copyright ©1998 Martha Lewis Kentfield			
Process Social and Emotional A	Definition	Tests Which Give Information	
Self-Concept and Relationships with Others		* Projective Drawing Tests  * Apperception Tests (CAT, TAT, Roberts)  * Piers-Harris Children's Self-Concept Scale (updated norms)  * Sentence Completion Tests  * Rorschach Psychodiagnostic Test  * Milton Adolescent Personality Inventory	
Social Maturity and Appropriateness o Behavior		* Woodcock-Johnson Scales of Independent Behavior-Revised (SIB-R)  * Vineland Adaptive Behavior Scale  * Developmental Profile H  * Achenbach Child Behavior Checklist (CB CL/4-18)  * Achenbach 1991 Teacher's Report Form  * Conners Parent & Teacher Rating Scales-Revised  * Behavior Evaluation Scale-2	
Academic Skills and Ach	nievement		
Reading and Phonics Skills	Ability to decode unfamiliar words, to recognize familiar words, and to understand written material.	* Wechsler Individual Achievement Test (WIAT): Reading Composite  * Woodcock-Johnson, Revised-Tests of Achievemeat (WJ-R ACH): Reading Subtests  * Kaufman Test of Educational Achievement (K- TEA): Reading Composite (1997 Norms)  * Ekwall Reading Test  * Informal survey of phonics skills	
Spelling Skills	Ability to encode words in written form. Use of spelling rules, visual recall, and auditory analysis skills in encoding words-	* WIAT: Spelling  * K-TEA: Spelling (1997 Norms)  * Wide Range Achievement Test-3 (WRAT-3): Spelling  * Test of Written Spelling-3  * Dictated Spelling Tasks	
Handwriting Skills	Neatness, spatial organization, and knowledge of manuscript and/or, cursive alphabets.	* WIAT: Written Expression  * Test of Written Language-Third Edition (TOWL-3)  * Slingerland, Tests 1, 2, 5, 6  * Alphabet Writing Task  * Classroom Writing Samples	

Learning Processes: A Diagnostic Framework				
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Process  Receptive Nonverbal Language	Definition  Ability to derive meaning from pictures, gestures, and facial expressions, and to interpret social situations without verbal clues.	* K-ABC: Gestalt Closure, Photo Series, Face		
Expressive Nonverbal Language	Ability to convey meaning through gestures, facial expressions, and drawings.	* Goodenough-Harris Drawing Test  * Kinetic Family Drawing  * ITPA: Manual Expression  * Observations of behavior		
Auditory Skills				
Auditory Discrimination	Ability to detect subtle likenesses and differences between speech sounds.	* Wepman Auditory Discrimination Test-2nd Edition  * Test of Auditory Perceptual Skills-Revised (TAPS-R): Auditory Word Discrimination  * Goldman-Fristoe-Woodcock Test of Auditory Discrimination		
Auditory Analysis	Ability to break words into syllables and/or discrete sound components.	* WJ-R, Cognitive: Incomplete Words * Slingerland: Test 7, Echolalia * Auditory Analysis Task (plant = p-l-a-n-t)		
Auditory Synthesis	Ability to combine supplied sounds or syllables into words (sound blending).	* WJ-R, Cognitive: Sound Blending * Mann-Suiter Sound Blending	I	
Auditory Immediate Memory	storage involved).	* Wechsler. Digit Span  * Stanford-Binet: FE-Memory for Sentences,     Memory for Digits  * K-ABC: Number Recall, Word Order  * WJ-R, Cognitive: Memory for Sentences,     Memory for Words     Detroit Tests of Learning Aptitude-Third Edition (DTLA-3): Sentence Imitation, Word     Sequences, Story Sequences  * Wide Range Assessment of Memory and     Learning (WRAML): Verbal Scale		

Learning Processes: A Diagnostic Framework Copyright ©1998 Martha Lewis Kentfield				
Process Visual Recent Memory	Definition  Ability to store and recall recently seen visual information.	* Slingerland: Tests 3, 5  * Ray-Osterrieth Complex Figure Drawing (ROCF)  * Weekly spelling tests  * WRAML: Visual Learning, Visual Learning Recall		
Visual Remote Memory	Ability to store and recall visual information seen several months or years earlier.	* Wechsler: Picture Completion, Object Assembly * Achievement tests: word recognition, oral reading, spelling		
Visual-Spatial Orientation	Ability to perceive spatial relationships involving one's own body and the environment Ability to organize and interpret spatial relationships on a two-dimensional level as in copying, writing or reading.	* Slingerland Tests: 1, 2  * Bender Visual-Motor Gestalt Test  * Jordan Left-Right Reversal Test-Revised  * Wechsler: Block Design  * Stanford-Binet: FE-Pattern Analysis  * Observations of written work, reading, and behavior		
Visual Scanning	Ability to investigate visual material in a systematic, organized way.	* Slingerland: Tests 3, 4, 8  * Motor Free Visual Perception Test-Revised  * Jordan Left-Right Reversal Test-Revised  * Observations of paragraph reading		

Visual Discrimination	Seeing the difference between two similar objects	Clearly spacing words/problems on a page.
Spatial Orientation	Loses materials. Late to class. Difficulty with oral reading. Unorganized homework. Difficulty judging time.	Provide more time for assignments or shorten them. Encourage silent reading. Provide less reading material and more reading time. Provide help in organization.
Expressive Language	Difficulty expressing themselves. May sound "cynical".	Provide opportunities for written reports. Allow -adequate time to respond to questions.
Receptive Language	Appears to be "not listening". Incomplete work.	Have students repeat directions back to you for understanding.
Organization		Provide course syllabus. Provide calendar with weekly plan, include homework. Provide written detailed explanation for projects. For long term projects - have periodic checks (graded or non-graded). Show by example (ready made notebook).

Processing Disorder	Manifestation	Strategies to Support
Auditory Sequencing	Confusion with number sequences, lists or lists of directions. Hearing ninety-four instead of forty-nine.	Provide written instructions as reinforcement of oral instruction. Use of visuals with lectures.
Auditory Memory	Difficulty remembering what was heard, difficulty remembering important items from a lecture. Spells poorly.	Provide written instruction to look back on. Don't penalize spelling, just correct. Provide basic outlines of what is being presented.
Visual Sequencing	Problems in using a separate answer sheet. Loses place easily. Problems with reading. Reversing or misreading numbers of letters. Reading words incorrectly. Difficulty with equations.	Read directions aloud. Provide oral instruction. Write on the overhead. Color code things written down. When writing questions on the board, change color every other question.
Visual Memory	Difficulty remembering what was seen. Reading comprehension. Difficulty with math equations. Poor recall of information.	Provide handouts that are clearly written. Provide oral instruction.
Dysgraphia	Inability to form letters correctly-students cannot read their own writing.	Oral tests. Tapes projects.
Visual Motor Integration	poorly. Poor written work. Unorganized.	Tape recorder for lectures. Substitute oral reports. Provide individual written outlines so there are fewer steps to process. In math or science require answers only for calculations. Use graph paper. Have "note check". Provide note-buddy. Lower standards for acceptable writing.
Auditory Discrimination	Often seems to misunderstand. Trouble telling differences between similar sounds or wordsseventeen for seventy. Seems to hear but not to listen.	Written lectures to follow. Talk at a slower pace. Give one task at a time.
Auditory Figure Ground	Trouble hearing sounds over background noises.	Sit student near you.
	Trouble seeing an image within competing background. Picking one line of print from another while reading.	Using an index card or marker when reading- to blot out distraction of other words.



### Learning Disabilities Association of America

# FACT SHEET DYSLEXIA

Please retain this information for continual use.

#### What is dyslexia?

<u>Dyslexia</u> is a learning disability in the area of reading. It is included in the category of "Learning Disabilities" in the Individuals with Disabilities Education Act (IDEA). A person with dyslexia is someone with average to above average intelligence whose problem in reading is not the result of emotional problems, lack of motivation, poor teaching, mental retardation, or vision or hearing deficits. The term <u>dyslexia</u>, however, is defined in different ways. While reading is the basic problem, people include different aspects of reading and related problems in their definitions. For example:

- Problems learning to translate printed words into spoken words with ease, beginning reading skills (decoding)
- Problems with word identification and/or reading comprehension

Persons with dyslexia often reverse or mis-sequence letters within words when reading or writing (b/d, brid/bird, on/no). They may also exhibit difficulties with one or more of the following:

- Perceiving and/or pronouncing words
- Understanding spoken language
- Recalling known words
- Handwriting
- Spelling
- Written language
- Math computation

### What is reading?

Reading is more than translating print into the spoken word (decoding). Reading is getting meaning from print. People who have not developed automatic word recognition skills may have comprehension problems because their energy is focused on identifying words rather than thinking about what they mean. Many of these children and adults read very slowly, often having to read things more than once to understand. Others may have automatic word recognition skills, but cannot comprehend what they read. They may also have trouble understanding spoken language.

over

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#### What causes dyslexia?

The basic cause of dyslexia is not known, however, much research is being done to determine the problems underlying dyslexia. Research indicates that, in many cases, dyslexia is inherited and may occur in several members of a family. Studies are being done to determine whether there are slight differences in the brains of people with dyslexia. Recent research indicates that many children having difficulty learning early reading skills (decoding) also have problems hearing individual sounds in words, analyzing whole words into parts, and blending sounds into words (phonological processing).

### What should be done when dyslexia is suspected?

Individuals suspected of having a reading disability should have a comprehensive psychoeducational evaluation including hearing, vision, and intelligence testing. This evaluation should include all areas of learning and learning processes, not just reading. The diagnostician(s) should then be able to determine whether there are additional learning disabilities, make recommendations for teaching methods, and specify whether additional services are needed.

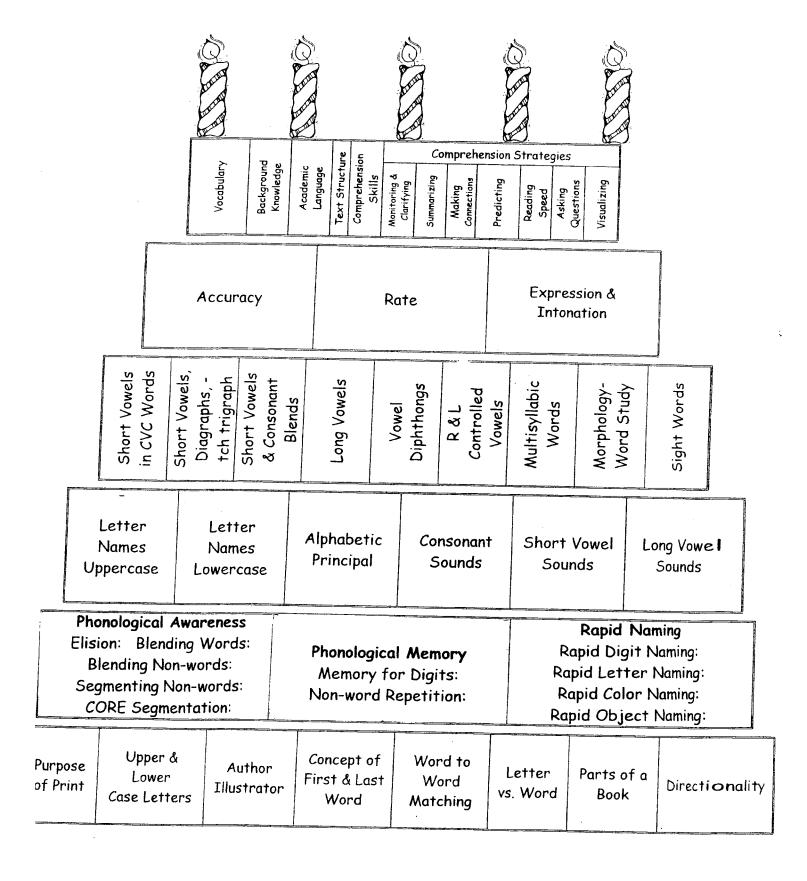
In many schools children are not identified as having a reading disability until they have failed for an extended period because of a "formula" used to determine whether a student is "eligible" for special services. A child should <u>not</u> have to fail for two or three years to demonstrate evidence of a learning disability.

### What educational interventions are appropriate?

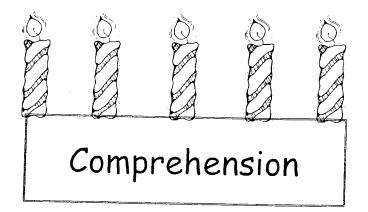
If a child is diagnosed as having a reading disability (or dyslexia), it is important for parents to ask exactly what the problem is, what method for teaching reading is recommended, and why it was selected. There are many approaches to teaching children with reading disabilities to read. Recent research on beginning reading skills indicated that many children having difficulty benefit from direct instruction in phonological processing and a multi-sensory phonics approach to reading. There is, however, no single method that will be effective with every child. A change in method should be considered if progress is not seen in a reasonable length of time. Selecting the appropriate reading method for a child with a reading disability is critical for success.

Widely advertised reading programs that claim to be successful in teaching phonics/reading to anyone should be viewed with caution. It is highly recommended that before investing in these programs, research documenting their effectiveness with individuals having diagnosed reading disabilities (dyslexia) be requested and reviewed.

# What Makes Up Reading? The Pieces



What Makes Up Reading?
The Layers



Automaticity/Fluency

Decoding & Word Attack Skills

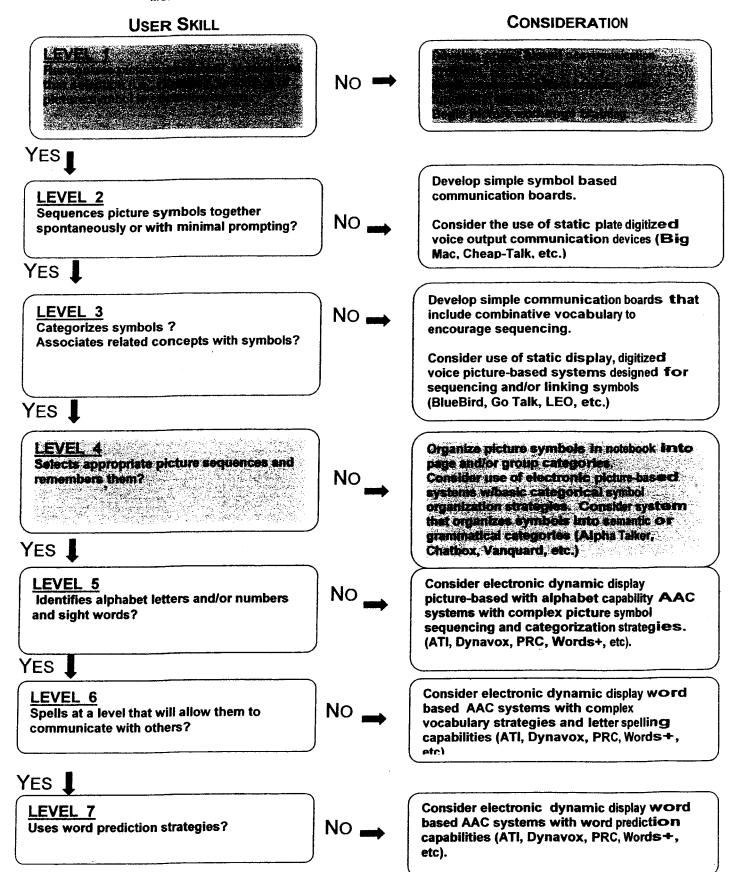
Alphabetic Knowledge/Phonics

Phonological Processing

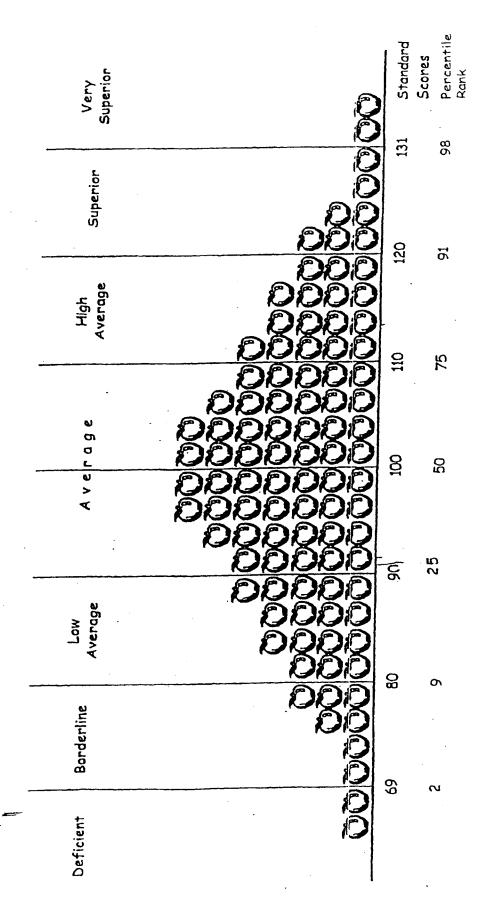
Concepts About Print

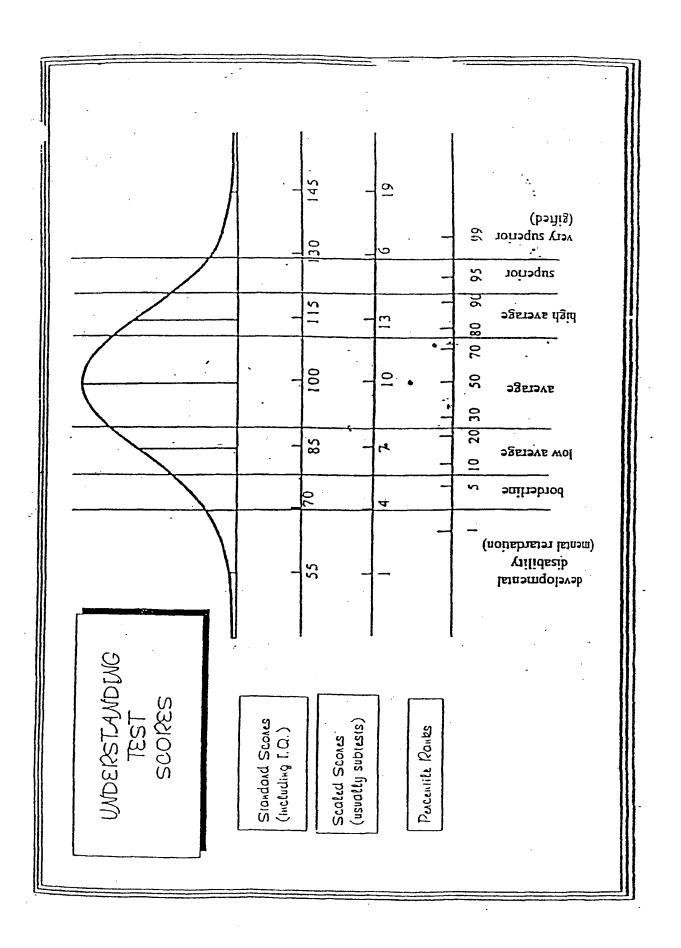
## **AAC SKILLS INVENTORY GUIDE**

MODIFIED FROM THE "PREDICTIVE ASSESSMENT PROCESS, CLOSING THE GAP CONFERENCE," (1995)



Classification Ratings Corresponding to Standard Scores and Percentile Ranks





WISC-III	Verbal Subtests:
Information:	Range of factual information gained from experience and education.
Similarities:	Logical and abstract verbal thinking (categorical).
Arithmetic	
Vocabulary:	Language development & word knowledge gained from experience and education
Comprehension:	Demonstration of practical information & knowledge of conventional standards of behavior and social judgment.
(Digit Span):	
	Performance Subtests:
Picture Completion:	Visual discrimination and visual memory. Visual recognition and identification (long-term visual memory).
Coding	Speed of learning and writing symbols. Psycho-motor speed.
Picture Arrangement:	Interpretation and sequencing of social situations. Anticipation of consequences. Temporal sequencing and time concepts.
Block Design:	Analysis of whole into component parts, formation of abstract designs, and nonverbal concept information.
Object Assembly:	Synthesizing and organizing parts to form familiar objects. Ability to benefit from sensory-motor feedback. Anticipation of relationships among parts.
(Symbol Search):	Scanning an array and deciding whether a symbol is present. Speed of visual search.
(Mazes):	Planning and following a visual patterns.

(WISC)				Intelligence range from a
Verbal Subtests		Performance Su	ıbtests	low score of 1 to a maximum
Information Similarities Arithmetic Vocabulary Comprehension (Digit Span) Verbal IQ = 114	10 16 11 13 12 8	Picture Completion Coding Picture Arrangement Block Design Object Assembly (Symbol Search)	6 4 10 12 7 6	score of 19. As you learned earlier, these subtests have a mean of 10 and a standard deviation of 3. A subtest score of 7 is one standard deviation below the mean (-1 SD) which is the same as a percentile rank of 16 (PR = 16). You can also convert the
Performance IQ =	<u>86</u>			subtest score of 7 into a standard score of 85 which
FULL SCALE IQ =	101			has a percentile rank of 16.

When we discussed subtest scatter, we saw that variation among subtest scores is a valuable source of information. Look at Katie's subtest scores. She has significant scatter, from a high score of 16 on Similarities (98 percentile) to a low score of 4 (2 percentile) on Coding.

As a parent, you need to understand what the various subtests measure. When we discussed Katie's test scores, you learned that Similarities subtest is highly correlated with abstract reasoning. The Coding subtest measures visual- perceptual mechanics. The Coding subtest is highly correlated with reading achievement but has little relation to abstract reasoning.

**Question**: Which Wechsler subtest is most closely correlated to intellectual horsepower and reasoning ability?

Answer: The Similarities subtest.

Question: Which subtest measures a child's ability to decode visual symbols?

Answer: The Coding subtest measures decoding of visual symbols.

The Psychological Assessment Resources, Inc. describes each WISC-III subtest as follows:

Information: factual knowledge, long-term memory, recall.

Similarities: abstract reasoning, verbal categories and concepts.

Arithmetic: attention and concentration, numerical reasoning.

Vocabulary: language development, word knowledge, verbal fluency.

Comprehension: social and practical judgment, common sense.

Digit Span: short-term auditory memory, concentration.

Picture Completion: alertness to detail, visual discrimination.

Coding: visual-motor coordination, speed, concentration.

Picture Arrangement: planning, logical thinking, social knowledge.

Block Design: spatial analysis, abstract visual problem-solving.

Object Assembly: visual analysis and construction of objects.

Symbol Search: visual-motor quickness, concentration, persistence.

Mazes: fine motor coordination, planning, following directions.

Intelligence testing usually includes a measure of a visual motor speed (as in the Coding subtest) and a measure of intellectual reasoning ability (as in the Similarities subtest). To develop an accurate picture of your child's strengths and weaknesses, you need to understand what the various subtests actually measure.

When subtest scores are in parentheses, this means that these scores are not computed as a part of the overall composite score. If you look at Katie's scores, you will see that (Digit Span) and (Symbol Search) are in parentheses. On the WISC-III, the Digit Span, Symbol Search and Mazes subtest scores are not included in the Verbal, Performance and Full Scale IQ scores. They are used to develop other composite scores.

More than half of all children with disabilities served under the special education law have learning disabilities and/or an attention deficit disorder. The most commonly administered tests fall under three categories: intellectual; educational; and projective personality tests.

In most cases, the intelligence test given is the WISC-III and/or the Stanford-Binet. Specific training and education is required before a test publisher will allow a diagnostician to administer the WISC-III. The Woodcock Test of Cognitive Abilities measures specific cognitive areas. This test may be administered by an educational diagnostician and does not require the same high level of training and certification to administer.

# There is more than one way to be intelligent The Seven Types of Intelligence

Do you feel smart? How do you even know whether or not you are smart? Should IQ be used to determine where to place children in school or what kind of programs, supports, and services which is the most appropriate? IQ doesn't look the same in all styles, nor does intelligence mean scores on one type of assessment measure meaning standardized IQ evaluation. Parents and teachers are trained to look at standardized IQ assessment as the only measure of intelligence, which is reflected in our traditional school system's style of learning: logic and mathematical skills, verbal and written communication skills, and analytical and organizational abilities.

Howard Gardner, a Harvard professor has performed research and posses that humans have many types of intelligence. In fact, Dr. Gardner has been able to identify seven, types of intelligence: linguistic, logical-mathematical, spatial, musical, body-kinesthetic, interpersonal, and interpersonal. Standardized IQ tests may measure how well a person is likely to perform in the current, traditional school system, but the tests do not even come close to predicting a child's potential for success in life after he/she leaves school. According to Gardner's findings, everyone can develop a reasonable use of all seven intelligence's, although the chances are good that each person tends to shine in two or three areas and must struggle to become more adept in the others.

## Linguistic

Linguistic intelligence has to do with verbal abilities, and those who possess great amounts of this kind of intelligence tend to be very good at writing, reading, speaking and debating. Conventional IQ tests place a great deal of value on linguistic abilities, a person who is linguistically inclined usually is considered to be very smart. The more linguistic person often has and uses an extensive vocabulary and tends to be particularly skilled with word games and semantics.

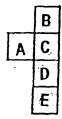
## Logical-Mathematical

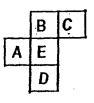
Logical-mathematical intelligence has to do with an individual's abilities in numbers, patterns, and logical reasoning. Certainly if the logical-mathematical comes easily for you, you should score high on traditional IQ tests. Those who naturally gifted in logical-mathematical intelligence are often the greatest scientists, mathematicians, and philosophers. On a more practical basis, you need logical-mathematical intelligence to successfully cope with balancing a check-book or grasping the significance of the national debt.

## Spatial

Spatial intelligence gives you the ability to think in vivid mental pictures, re-creating or restructuring a given image or situation. Those who are gifted spatially can often look at something and instantly pinpoint areas that could be changed to improve or alter its appearance. Highly spatial professions include architecture, drafting, and mechanical drawing. In almost any given situation, those with spatial intelligence have the natural ability to see what something could be as easily as what it is. A spatial exercise on a standard IQ test can be the following example;

These squares will fold into a box which is open at the top. Which letter would mark the BOTTOM on the box?





## Musical

Musical intelligence expresses itself through a natural rhythm and melody, and one who is gifted in this area often seems to live as if life is set to music. Although, you may not have "an ear for music" or "perfect pitch," you can still possess a great deal of inherent musical appreciation ability. Many people need music in the background when they are working, and they find themselves tapping their feet almost subconsciously. If you are high in musical intelligence, you may listen to music more analytically than most, appreciating the nuances others may miss altogether.

## Bodily-Kinesthetic

Bodily-kinesthetic intelligence reflects a high degree of ability in bodily movement or physical activity. This includes those who can skillfully use their hands, such as surgeons or mechanics; those who beautifully bring art to life, such as actors, actresses, and artists; and those who vigorously pursue a blend of physical activity and mental strategies, such as athletes and coaches. Although, schools are highly enthusiastic about physical education and sports activities, the bodily-kinesthetic intelligence is not often valued as a way of being smart. In fact,

sometimes a gifted athlete who can't be successful linguistically as another student is accused of being a "dumb jock." It's time we recognize and value kinesthetic intelligence instead of considering only quiet academic intelligence as an indicator of accomplishment.

## **Interpersonal**

Interpersonal intelligence affords those who have it the gift of understanding, appreciating, and getting along well with other people. This intelligence is not usually measured in the traditional academic selling. These people often appear of have a sixth sense when it comes to reading another person. They can almost always tell when something's wrong, even if no words a have been spoken. Those who need a friend are quickly drawn to a person with interpersonal intelligence.

## **Interpersonal**

Interpersonal intelligence is not always readily apparent in a person because it so often expresses itself in solitude. It is a natural gift of understanding ourselves, knowing who and what we are, and how we fit into the greater scheme of the universe. Those who are naturally strong interpersonally enjoy times of reflection, meditation, and time alone. They seem to possess a more positive self concept than most, and they don't rely on others' opinions to determine their life goals and aspirations.

# Woodcock-Johnson IV Sub-test Summary Standard Battery

<u>Letter Word</u>: A measure of reading decoding. This test starts out testing the ability to identify letter names of several uppercase and lowercase letters, and moves into identifying words. This sub-test requires basic word identification.

<u>Passage Comprehension</u>: A measure of basic reading comprehension, using picture and context clues in a modified doze task. The student reads the passage and supplies the missing word that fits in the space.

<u>Reading Fluency</u>: A measure of reading speed and comprehension. It is a timed test; the student has 3 minutes to read simple sentences and circle yes or no if the sentence is true or not.

<u>Calculation</u>: This is an untimed test of basic math calculation skills, starting with basic facts and moving on to more complicated operations.

<u>Applied Problems</u>: This test measures quantitative reasoning, math achievement, and math knowledge, requiring the student to use his ability to analyze and solve math problems. The test is untimed and scratch paper is available.

<u>Math Fluency</u>: A timed test that measures speed and accuracy. The student has three minutes to complete as many basic facts problems as possible, starting with mixed addition and subtraction and moving on to harder facts.

<u>Writing Samples</u>: This untimed test measures the ability to convey ideas in writing. A picture or word stimulus is used to prompt writing, and spelling and punctuation are not a factor. The student receives a score of 0, 1, or 2 for each item, depending on sentence content.

<u>Writing Fluency</u>: Measures the ability to write rapidly with ease (automaticity). The task requires producing legible, simple sentences with acceptable English structure. The student has 7 minutes to write sentences that include the three words provided.

<u>Spelling</u>: Measures the knowledge of prewriting skills, sight vocabulary, and phonics skills to spell words correctly.

The above tests are grouped for Broad Reading, Broad Math, and Broad Writing Scores

• For more information, go to the Alternate Assessment work page or the

MPRRC Newsletter

#### Alternate Assessment: Q & A

Вγ

Carol B. Massanari, Ph.D.

Mountain Plains Regional Resource Center (MPRRC)

This document was created as a tool for state staff, local educators, and other stakeholders who have a vested interest in creating an alternate assessment process for a state or local district. The information contained in this document is a summary of information shared by the United States Department of Education Office of Special Education Programs (OSEP) during a teleconference call with the State Directors of Special Education in the MPRRC region. The call was designed in a question and answer format. This document reflects the questions raised along with a summary of the responses given during that call. Two questions, the first and the last, have been added in order to provide a more rounded discussion about alternate assessment. OSEP staff who participated on the call has reviewed this document.

#### Question: What exactly is an alternate assessment?

An alternate assessment is an assessment that is different from the assessment given to most students. It is best viewed as a "process" for collecting information about what a student knows and can do. Generally when we think of assessment, we think of a test. This is because most statewide assessments consist of taking a test, although some states are also using a portfolio approach that allows for collecting samples of student work. The majority of students participate by taking the tests, some by using accommodations. Some students, however, are unable to take the test even with accommodations or modifications. For these students, a state must design an alternate way of determining their learning progress. Some of the data collection strategies within an alternate assessment system may include:

- observing the child in the course of the school day over a specified period of time;
- interviewing parents or family members about what the child does outside of school;
- asking the child to perform a specific activity or task and noting the level of performance;
- administering a commercially developed assessment instrument (e.g., Brigance) and comparing the results with a set of state established standards; or
- reviewing records that have been developed over a designated period of time.

The key to keep in mind is to choose ways of collecting data that will best respond to the purpose for which the assessment system is being developed.

#### Question: What is the purpose for an alternate assessment?

The purpose for an alternate assessment should parallel the purpose for any statewide or district-wide assessment. In fact, multiple purposes can drive a state to develop an assessment system. The law includes a provision for an alternate assessment in recognition of the fact that the general assessment might not be appropriate for every student. There was a recognition that a relatively small percentage of students would not be able to participate in standard state-wide assessments.

## Question: When does a state (or district) need to develop an alternate assessment?

It is important to keep in mind that within the context of IDEA '97, the purpose for including an alternate assessment is to ensure that state and district-wide assessment (or accountability) systems are inclusive. This would mean that at a minimum a state (or district) is expected to develop an alternate assessment process whenever there is a general state or district-wide assessment process developed. A state (or district) could choose to have additional assessments – there is nothing to prohibit this. For example, if a state (or district) decides to test all students in the area of reading, then the state would have a general and an alternate assessment process for reading. Special educators in a state (or district), however, might want to know if students with disabilities are acquiring job readiness skills that go beyond reading. There is nothing that would prohibit the state from also developing a job readiness assessment. This could not, however, be done to the exclusion of developing an assessment that corresponds with the general reading assessment.

## Question: Is it necessary to have an alternate assessment for every statewide or district-wide test that is administered?

The critical thing to keep in mind is to ensure that the statewide assessment system is inclusive. In determining whether or not the system is inclusive, it is necessary to look at two variables: 1) content and 2) purpose.

If certain content (math, reading, writing, science, social studies) areas are deemed important for some students, than those areas are important for ALL kids. In some instances a state might choose to design separate, content-specific tests as a way of measuring student learning in each of the content areas. This leads to the question of whether it would be necessary to develop an alternate assessment for each of the content areas. The way to decide is to determine whether or not all content areas are included in the alternate assessment. If the general assessment uses one test for math, one for science, and one for language arts/reading and the alternate assessment assesses only language arts/reading content, then an alternate assessment that includes math and science content would need to be developed. On the other hand, if the alternate assessment uses an integrated approach, that is, includes math, science, and language arts/reading concepts in one assessment, then only one alternate assessment would be necessary. The critical factor is to ensure that those content areas assessed in the general assessment are included in the alternate assessment.

This is critical to the purpose of equity in assessment, as well as allowing access to the general curriculum to the maximum degree appropriate for the student.

The second variable to consider is purpose. For example, if a state (or district) develops one test to determine general progress being made in student learning and another test to determine eligibility for graduation, then the state (or district) also would need to have an alternate assessment that meets both purposes. Again, if one assessment system can meet both purposes, a state (or district) would need to develop only one. However, in the example above, if the alternate assessment were designed solely to determine progress being made in student learning, then a second alternate strategy would be needed to determine graduation.

## Q: What are the expectations for reporting results of the alternate assessment?

At this point in time, there are no expectations that results of alternate assessment will be collected for reporting to Congress the status of learning among students with disabilities on a national level aggregated across states. OSEP has targeted other research projects that will gather data for this purpose.

There are, however, specific requirements for reporting. States are required to report to the public the results of the alternate assessment at the same frequency and detail used for reporting results on other statewide assessments. The only exceptions would be if the reporting was not statistically sound or if reporting would result in identifying individual children. States also are required to report to the Secretary of the Education Department data related to the progress on the state performance goals and indicators. Other than that, the purpose for reporting assessment results and requirements for such reporting are left to the individual state. Generally what is done to report results for children with disabilities must be done to report results for children with disabilities.

## Invalidity and discriminatory impact of the IQ/achievement discrepancy requirement

Evidence that phonological awareness is the core deficit in early reading difficulties has gone hand in hand with another, even more radical, departure in how scientists define and diagnose reading disabilities including dyslexia. Reading researchers strongly reject the IQ/achievement discrepancy requirement as a valid criterion for assessing the need for early intervention.

Rejection of the discrepancy requirement extends beyond familiar criticisms that IQ tests are culturally biased and frequently fail to capture the capabilities of children from language-poor families. <sup>23</sup> Recent studies, eminent researcher Joseph K. Torgesen writes, have "led to the discovery that the early word reading difficulties of children with relatively low general intelligence and verbal ability are associated with the same factors (weaknesses in phonological processing) that interfere with early reading growth in children who have general intelligence in the normal range. <sup>124</sup> In other words, children with low IQs generally experience early reading difficulties for the same basic reasons as children with high IQs.

The discrepancy requirement is not just bad science. It perversely results in high-IQ children with reading difficulties receiving more extra instruction than low-IQ children. The National Research Council Committee on the Prevention of Reading Difficulties in Young Children observes: "For example, a child with a standard reading score of 75 and an IQ of 90 is likely to show similar benefits from remedial instruction when compared with a child who has a reading score of 75 and an IQ of 100, but only the latter child would have a sufficient aptitude-achievement discrepancy to be eligible for special education services in most states.'<sup>25</sup>

Maryland is one of these states. And the children who suffer the most are concentrated in urban school districts like Baltimore City where students in the

early grades rarely have sufficiently large intelligence/achievement discrepancies to meet the special education eligibility requirements. In Baltimore City, about 6 percent of all students are eventually found eligible for LID special education services. But the great majority of them do not receive the services until after the third grade when their eligibility is based less on the diagnosis of a disability and more, pragmatically, on their impact on the regular classroom. <sup>26</sup> They are typically several years behind grade level and continuing to fall further behind. Their instructional needs cannot be met by the already overburdened classroom teacher, and their academic frustrations often result in disruptive classroom behaviors.

These children are the "invisible dyslexics" who do not receive instructional assistance until it is too little, too late. The "wait to fail" syndrome prevails, and the lost academic ground is almost never recovered. <sup>27</sup>

The invalidity of the discrepancy requirement does not mean that intelligence is immaterial. Intelligence is a factor as students with (and without) phonological awareness difficulties labor up the ladder of reading competencies. <sup>28</sup> Still, the ascendant reading research shows that low-IQ children can acquire the necessary foundational reading skills if they get adequate early assistance. It is a national tragedy that so many urban children with low IQs as well as other socioeconomic burdens are not getting that assistance.

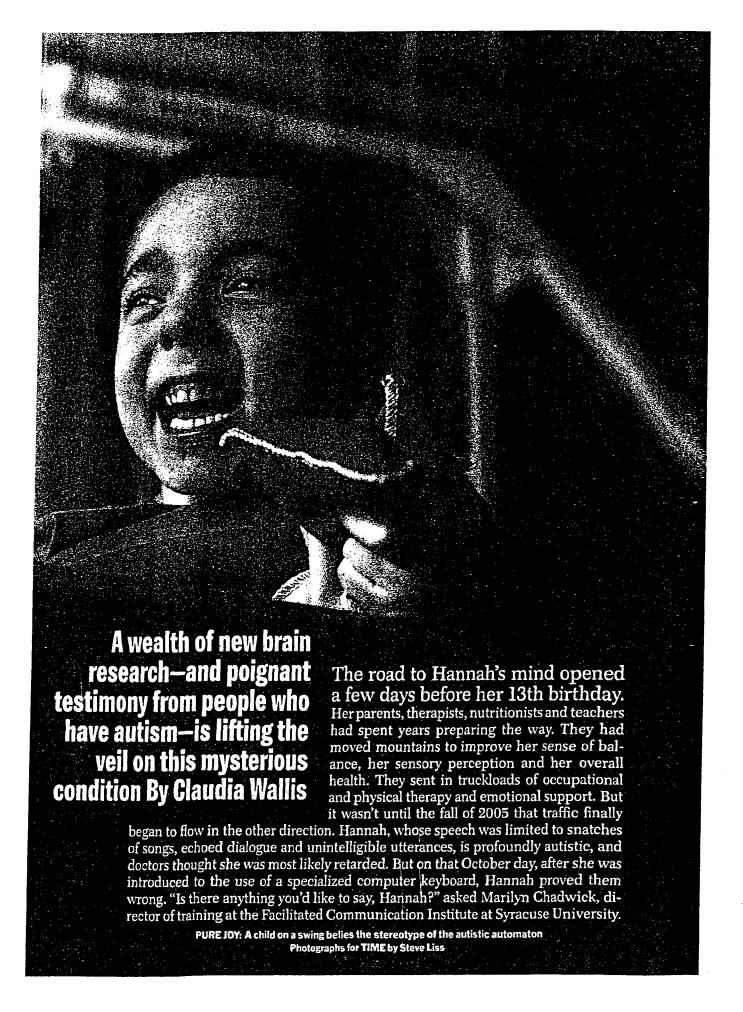
### The prevalence of mild or severe reading difficulties

The scientific findings related to phonological awareness and the invalidity of the discrepancy requirement challenge the traditional view that reading disabilities, including dyslexia, are a discrete disorder that can be determined based on a cut-off statistical measure. Rather, under what the Committee on Preventing Reading Difficulties in Young Children calls the "dimensional approach," reading difficulties are seen as the lower end of a normal distribution of reading ability among all children. The Committee found that "deciding on the precise point on the [distribution] at which to distinguish normal reading from reading disability is quite arbitrary .... For instance, children who do not quite meet the arbitrary cutoff score [for the discrepancy requirement for LD] have very similar abilities and needs as those of children whose reading levels are just on the other side of the cut-point." <sup>29</sup>

Experts vary widely in their estimates of the number of children who are at

mild or severe risk along the distribution scale. Several suggest about 20 percent<sup>30</sup> Other estimates are as high as 50 percent.<sup>31</sup> A key variable is the quality of early reading instruction. For example, Torgesen observes that 30 percent to 60 percent of children frequently fall below a reasonable standard for reading progress, but effective instruction can reduce the failure rate to approximately 2 to 6 percent. <sup>32</sup>

In effect, the mild-to-severe dimensional view of reading difficulties including dyslexia brings the definition of dyslexia partially full circle. Dyslexia – defined primarily in terms of core deficits in phonological processing – remains relatively synonymous with most reading difficulties. The difference in the new definitional approach is that it does not require an intelligence-achievement discrepancy.



#### BEHAVIOR

With Chadwick helping to stabilize her right wrist and her mother watching, a girl thought to be incapable of learning to read or write slowly typed, "I love Mom."

A year and a half later, Hannah sits with her tutor at a small computer desk in her suburban home outside New York City. Facilitated communication is controversial (critics complain that it's often the facilitator who is really communicating), but it has clearly turned Hannah's life around. Since her breakthrough, she no longer spends much of her day watching Sesame Street and Blue's Clues. Instead, she is working her way through high school biology, algebra and ancient history. "It became obvious fairly quickly that she already knew a lot besides how to read," says her tutor, Tonette Jacob.

During the silent years, it seems, Hannah was soaking up vast storehouses of information. The girl without language had an extensive vocabulary, a sense of humor and some unusual gifts. One day, when Jacob presented her with a page of 30 or so math problems, Hannah took one look, then typed all 30 answers. Stunned, Jacob asked, "Do you have a photographic memory?" Hannah typed "Yes."

Like many people with autism, Hannah is so acutely sensitive to sound that she'll catch every word of a conversation occurring elsewhere in the house, which may account for much of her knowledge. She is also hypersensitive to visual input. Gazing directly at things is difficult, so she often relies on her almost preternatural peripheral vision. Hannah's newfound ability to communicate has enabled her intellect to flower, but it also has a dark side: she has become painfully aware of her own autism. Of this, she writes, "Reality hurts."

MORE THAN 60 YEARS AFTER AUTISM WAS first described by American psychiatrist Leo Kanner, there are still more questions than answers about this complex disorder. Its causes are still uncertain, as are the reasons for the rapidly rising incidence of autism in the U.S., Japan, England, Denmark and France. But slowly, steadily, many myths about autism are falling away, as scientists get a better picture of what's going on in the bodies and brains of people with autism and as more of those who are profoundly af-

fected, like Hannah, are able to give voice to their experience. Among the surprises:

- ■Autism is almost certainly, like cancer, many diseases with many distinct causes. It's well known that there's a wide range in the severity of symptoms—from profound disability to milder forms like Asperger syndrome, in which intellectual ability is generally high but social awareness is low. Indeed, doctors now prefer the term Autistic Spectrum Disorders (ASD). But scientists suspect there are also distinct subtypes, including an early-onset type and a regressive type that can strike as late as age 2.
- ■Once thought to be mainly a disease of the cerebellum—a region in the back of the brain that integrates sensory and motor activity, autism is increasingly seen as a pervasive problem with the way the brain is wired. The distribution of white matter, the nerve fibers that link diverse parts of the brain, is abnormal, but it's not clear how much is the cause and how much the result of autism.
- ■The immune system may play a critical role in the development of at least some types of autism. This suggests some new avenues of prevention and treatment.
- ■Many classic symptoms of autism—spinning, head banging, endlessly repeating phrases—appear to be coping mechanisms rather than hard-wired behaviors. Other classic symptoms—a lack of emotion, an inability to love—can now be largely dismissed as artifacts of impaired communication. The same may be true of the supposedly high incidence of mental retardation.
- ■The world of autism therapy continues to be bombarded by cure-of-the-day fads. But therapists are beginning to sort out the best ways to intervene. And while autism is generally a lifelong struggle, there are some reported cases in which kids who were identified as autistic and treated at an early age no longer exhibit symptoms.

#### THE CURIOUS INCIDENCE

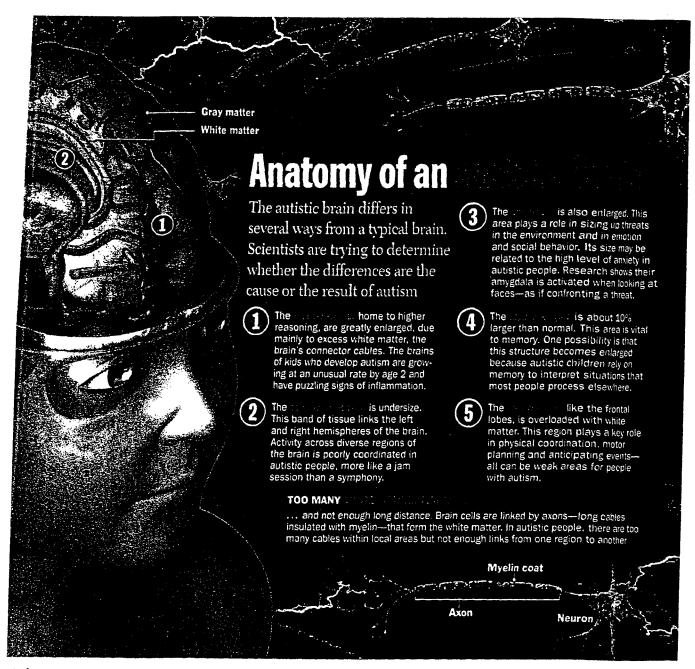
DR. THOMAS INSEL, DIRECTOR OF THE National Institute of Mental Health (NIMH), which funds much of the nation's autism research, remembers a time when the disorder was rarely diagnosed. "When my brother trained at Children's Hospital at Harvard in the 1970s, they admitted a child with autism, and the head of



the hospital brought all of the residents through to see," says Insel. "He said, 'You've got to see this case; you'll never see it again."

Alas, he was mistaken. According to the Centers for Disease Control and Prevention (CDC), about 1 in 166 American children born today will fall somewhere on the autistic spectrum. That's double the rate of 10 years ago and 10 times the estimated incidence a generation ago. While some have doubted the new figures, two surveys released last week by the CDC were

# Roughly 1 in 166 American children born today will fall somewhere on the autistic spectrum. That's more than three times the number with juvenile diabetes



in keeping with this shocking incidence.

No one can say why the numbers have soared. Greater awareness and public health campaigns to encourage earlier diagnosis have surely played a part, since in the past, many such children were probably labeled retarded or insane and hidden in institutions. But environmental factors may also be contributing to the spike. To get to the bottom of that mystery and others, federal funding for autism research has more than tripled in the past decade, to \$100 million, although it pales in comparison with the estimated \$500 million spent on childhood cancers, which affect fewer youngsters.

At the Center for Children's Environmental Health and Disease Prevention at the University of California at Davis, toxicologist Isaac Pessah is studying hair, blood, urine and tissue samples from 700 families with autism. He's testing for 17 metals, traces of pesticides, opioids and other toxicants. In March Pessah caused a stir by releasing a study that showed that even the low level of mercury used in vaccines preserved with thimerosal, long a suspect in autism, can trigger irregularities in the immune-system cells—at least in the test tube. But he does not regard thimerosal (which has been removed from routine childhood vaccines) as anything like a smoking gun. "There's probably no one trigger that's causing autism from the environmental side," says Pessah, "and there's no one gene that's causing it."

Indeed, most researchers believe autism arises from a combination of genetic vulnerabilities and environmental triggers. An identical twin of a child with autism has a

60% to 90% chance of also being affected. And there's little doubt that a vulnerability to ASD runs in some families: the sibling of a child with autism has about a 10% chance of having ASD. Gene scientists working on autism have found suspicious spots on chromosomes 2, 5, 7, 11 and 17, but there are probably dozens of genes at work. "We think there are a number of different autisms, each of which could have a different cause and different genes involved," says David Amaral, research director of the MIND (Medical Investigation of Neurodevelopmental Disorders) Institute, also at U.C. Davis.

Amaral is heading MIND's efforts to assemble a database of clinical, behavioral and genetic information on 1,800 autistic kids. One goal is to clearly define autism subtypes. "It's hard to do the genetics if you're talking

#### BEHAVIOR

about four or five different syndromes," says NIMH chief Insel. "Does the presence of seizures define a separate illness? What about the kids who seem to develop normally for the first year and a half and then regress—is that a separate thing?" And what about the large number of autistic kids who have serious gastrointestinal problems and the many with immune dysfunctions—are they distinct subtypes?

Amaral and colleague Judy Van de Water believe they are onto a major discovery about the origins of at least one type of autism-a strongly familial variety. They have detected aberrant antibodies in the blood of kids from families with a pattern of ASD and, significantly, in mothers with more than one autistic child. 'These antibodies are actually raised against proteins in the fetal brain," says Amaral, who recently submitted a paper on the discovery. The working hypothesis is that these antibodies may alter brain development in ways that lead to autism. If correct, the finding could lead to a maternal blood test and the use of a therapy called plasmapheresis to clear antibodies from the mother's blood. "You get a sense of the excitement," says Amaral, "if you could prevent, say, 20% of kids from getting autism. But we don't want to raise false hopes."

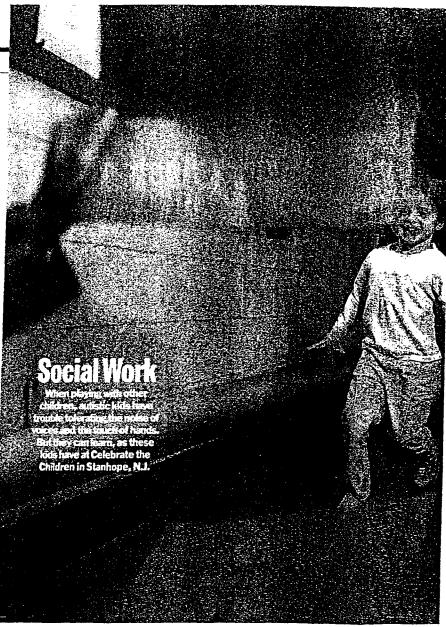
#### THE AUTISTIC BRAIN

WHETHER THE CAUSE IS MATERNAL ANTIbodies, heavy metals or something else, there is no question that the brains of young children with autism have unusual features. To begin with, they tend to be too big. In studies based on magnetic resonance imaging (MRI) and basic tape-measure readings, neuroscientist Eric Courchesne at Children's Hospi-

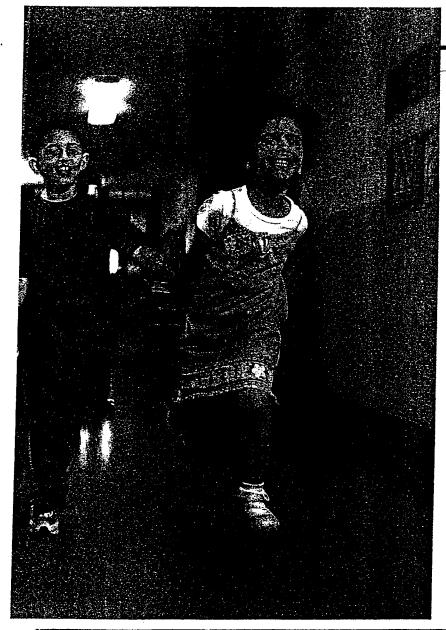
tal of San Diego showed that while children with autism are born with ordinary-size brains, they experience a rapid expansion by age 2—particularly in the frontal lobes. By age 4, says Courchesne, autistic children tend to have brains the size of a normal 13-year-old. This aberrant growth is even more pronounced in girls, he says, although for reasons that remain mysterious, only 1 out of 5 children with autism is female. More recent studies by Amaral and others have found that the amygdala, an area associated with social behavior, is also oversize, a finding Amaral believes

## **Eye Contact**

Autistic kids often look at the mouth rather than the eyes of someone speaking. A good teacher—and Silly String—can change that







I need a
Break.

is related to the high levels of anxiety seen in as many as 80% of people with autism.

Harvard pediatric neurologist Dr. Martha Herbert reported last year that the excess white matter in autistic brains has a specific distribution: local areas tend to be overconnected, while links between more distant regions of the brain are weak. The brain's right and left hemispheres are also poorly connected. It's as if there are too many competing local services but no long distance.

This observation jibes neatly with imaging studies that look at live brain activity in autistic people. Studies using functional MRI show a lack of coordination among brain regions, says Marcel Just, director of Carnegie Mellon's Center for Cognitive Brain Imaging in Pittsburgh, Pa. Just has scanned dozens of 15- to 35-year-old autistic people with IOs in the normal range, giving them thinking tasks as he monitors their brain activity. thing you see," says Just, "is that [activity in] different areas is not going up and down at the same time. There's a lack of synchronization, sort of like a difference between a jam session and a string quartet In autism, each area does its own thing."

What remains unclear is whether the interconnectivity problem is the result of autism or its cause. Perhaps all that excess wiring is like the extra blood vessels around the heart of a person who has suffered a heart attack—the body's attempt to route around a problem. Or perhaps the abnormal growth of the brain has to do with the immune system; researchers at Johns Hopkins have found signs that autistic brains have chronic inflammation. "It's impossible to tell the chicken from the egg at this point," Just says.

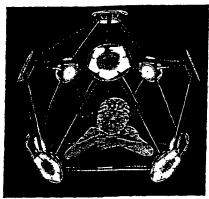
Autistic people have been shown to use their brains in unusual ways: they memorize alphabet characters in a part of the brain that ordinarily processes shapes. They tend to use the visual centers in the back of the brain for tasks usually handled by the prefrontal cortex. They often look at the mouth instead of the eyes of someone who is speaking. Their focus, says psychologist Ami Klin of Yale's Child Study Center, is "not on the social allegiances—for example, the longing gaze of a mother—but physical allegiances—a mouth that moves."

Do these differences reflect fun-

## **Planning**

Transitions are hard for autistic kids. The visuals on this schedule help Eric anticipate the plan and indicate when he needs a break damental pathology, or are they downstream effects of some more basic problem? No one knows. But the fact that early intervention brings better results for children with ASD could be a clue that some of the odd brain anatomy and activity are secondary—and perhaps even preventable. Studies that look at whether early therapy might help normalize the brain are beginning at York University in Toronto, but results are probably years away.

AUTISM FROM THE INSIDE IN THE MEANTIME, 300,000 SCHOOL-AGE American children and many adults are at-



BRAIN SCAN
This geodesic camera is being used in conjunction with MRIs to help scientists peer into the brains of autistic children

tempting to get through daily life with autism. The world has tended to hear from those who are highest functioning, like Temple Grandin, the author and Colorado State University professor of livestock behavior known for designing humane slaughterhouses. But the voices of those more severely affected are beginning to be heard as well. Such was the case with Sue Rubin, 27, a college student from Whittier, Calif., who has no functional speech and matches most people's stereotyped image of a retarded person; yet she was able to write the narration for the Oscar-nominated documentary about her life, Autism Is a World.

What such individuals have to say about their experience is offering new clues to their condition. It also conforms remarkably to what scientists see inside their brains. By and large, people with ASD have difficulty bringing different cognitive functions together in an integrated way. There is a tendency to hyperfocus on detail and miss the big picture. Coordinating volition with movement and sensation can be difficult for some. Chandima Rajapatirana, an autistic writer from Potomac, Md., offers this account: "Helplessly I sit while Mom calls me

to come. I know what I must do, but often I can't get up until she says, 'Stand up,' " he writes. "[The] knack of knowing where my body is does not come easy for me. Interestingly I do not know if I am sitting or standing. I am not aware of my body unless it is touching something ... Your hand on mine lets me know where my hand is. Jarring my legs by walking tells me I am alive."

Such descriptions shed light on seemingly self-destructive behavior like biting, scratching, spinning and head banging. For people like Rajapatirana, banging against a wall can be a useful way to tell, quite literally, where their head is at. "Before we extinguish [such behaviors], we need to understand what they are telling us," writes Judith Bluestone, a Seattle-based therapist who is autistic, in *The Fabric of Autism*.

In his new book Send in the Idiots, British journalist Kamran Nazeer, who is also autistic, describes the need for repetitive motions or words as a search for "local coherence" in a world full of jarring randomness. He also conveys the social difficulties: "Striking up conversations with strangers," he writes, "is an autistic person's version of extreme sports." Indeed, at a recent retreat for people with ASD, attendees wore colored tags indicating their comfort level with spontaneous conversation: red meant don't approach, yellow meant talk if we've already met, green indicated, "I'd love to talk, but I'm not good at initiating."

Perhaps the worst fate for a person with ASD is to have a lively intelligence trapped in a body that makes it difficult for others to see that the lights are on. Neuroscientist Michael Merzenich at the University of California, San Francisco, studied an

autistic boy who is unable to speak or even sustain his attention to a task for more than a few moments, and yet is aware of his condition and writes remarkable poetry. How many other autistic kids, Merzenich wonders, "are living in a

well where no one can hear them"?

Luckily for Hannah, her voice and thoughts are being heard. Since learning to type, she has begun to speak a few words reliably—"yes," "no" and the key word "I"—to express her desires. All this seems miraculous to her parents. "I was told to give up and get on with my life," says her mother. Now she and her husband are thinking about saving for college. —With reporting by Dan Cray/Los Angeles

VO SC Early intervention in a

Early intervention in a well-run program is the key to helping autistic children reach their potential. A close-up look at two approaches



By CLAUDIA WALLIS

ROM THE MOMENT PARENTS ABSORB the shock that their child may be autistic, they enter a dizzying world of specialists, therapists and, alas, purveyors of snake oil. Getting the right help quickly is paramount, but it is hard to make good decisions when you are in a panic or fighting despair.

For the past 20 years, the dominant way

Lovaas at ucla published a small study with huge repercussions. He reported that 9 out of 19 autistic children taught for 40 hours a week with behaviorist methods had big jumps in IQ and were able to pass first grade; only 1 out of 40 in control groups did so. It was the first bright ray of hope in autism.

Recent years have brought questions about the ABA model. When Lovaas protégé Tristram Smith tried to replicate the 1987 findings in a 2000 study, he got a more modest success rate on academic measures and virtually no gains in social behavior. Others,

meanwhile, have devised new ways of working with autistic kids. One of the best known was developed by child psychiatrist Stanley Greenspan, who spent 15 years studying infant development at the National Institute of Mental Health. His method, called DIR (developmental, individual-difference, relationship based), has as its premise the idea that an exchange of emotional signals, initially between mother and infant, form the basis for learning in childhood. Greenspan trains parents and teachers to engage the emotions

TIME, MAY 15, 2006

of even the most withdrawn toddlers by getting down on the floor and entering the child's world, helping turn repetitive acts like lining up blocks into playful interactions. He describes the method, also called Floortime, in a new book, Engaging Autism.

While the majority of U.S. programs for autistic children are based on ARA tech-

niques, DIR has made inroads, and many programs now mix elements of both. How do the techniques differ in practice? To find out, TIME visited two schools, each a model for one school of thought.

## ALPINE LEARNING GROUP

It's EASY TO SEE WHY A PARENT would fight to get a child placed here. Who wouldn't want this calm, orderly world for an anxious child with all the sensitivities of autism? Alpine, in Paramus, N.J., has 28 students, ages 3 to 21, in six gleaming light-filled classrooms. The staff-to-child ratio is 1 to 1. The \$72,223 tuition is covered by the state—federal law requires a free education for children with disabilities in an "appropriate" setting.

At Alpine, every goal, every lesson, every response is carefully documented in binders that track each child's progress. That is the rigorous heart of ABA, explains executive director Bridget Taylor, who cofounded the school in 1988. "I'm a scientist-practitioner; I need data," says Taylor, a certi-

fied ABA therapist with a Ph.D. in psychology. The binder for Jodi DiPiazza, 4, is easily seven inches thick, though Jodi has been at Alpine less than a year. Like most other children at the school, she started ABA therapy at home as a toddler.

In her classroom, Jodi sits quietly at a small table with a teacher. They take turns looking at photos and using a complete sentence to describe the scene ("The girl is riding a bike"). Each correct answer earns Jodi a sticker on a chart; with enough stickers she can choose a reward. ABA was once famous for its M&M rewards, but better programs now tailor positive reinforcement to the child's preferences—a favorite activity, a hug or, in the case of one Alpine student, a packet of ketchup. Though Jodi didn't talk at all

until age 3, she speaks well and is mastering skills quickly with the help of two hours of tutoring in the evening. "From the moment she wakes up till she goes to sleep, everything is structured," says her mother Michelle, who is thrilled with Jodi's progress.

Taylor says 29% of her students, most from ages 5 to 8, get mainstreamed into regular schools, generally with an aide.





**Two Systems** 

At Alpine, top, Jodi, 4, will earn a sticker for herself by locating the correct date on a calendar. In group activities at CTC, bottom, teachers reward students with rowdy shouts of encouragement and big grins

Many who remain at Alpine have limited language skills; some of the older students use electronic devices to express basic desires. The ritualistic behavior that is characteristic of autism is strongly suppressed. "Hands down," says a teacher to a child who begins to flap. "We're not a culture that accepts that," says Taylor. "Fifty percent of the

battle is addressing behavior to look good."

In a classroom with four teenage boys, the focus is on life skills. Johnathan learns to type a grocery list, which he and an instructor will later take shopping. Another boy, learning to use a camera, asks visitors whether he may take their picture. He uses the same words and intonation each time he asks.

> Robotic behavior, lack of emotion and inability to use trained skills outside school are some of the shortcomings critics attribute to ABA. A boy who has learned to play Nintendo games at Alpine, for instance, reverts to simply switching the game on and off when at home. Proponents concede certain weak points, but they also note a long record of results. Says Tristram Smith of the University of Rochester: "Anything outside ABA is basically experimental at this point."

## CELEBRATE THE

THIS IS NOT A QUIET SCHOOL. The hallways are filled with the sounds of kids talking and playing. The walls are festooned with banners, photographs and artwork. Parents always ask whether it's too much stimulation, says director Monica Osgood, but the school wants its students to adapt to the "real world." Celebrate the Children (CTC), which costs \$47,856 a year—paid by the state—is one of a growing number of DIR

schools. It opened its doors in Stanhope, N.J., in January 2004 with just three students. It now has 41, from toddlers to teens, and is still expanding fast.

CTC emphasizes the expression of emotion and spontaneous thinking. Rather than work on a highly specific skill, DIR activities tend to include complex social interactions that build many skills at once. In a classroom for 5-to-9-year-olds, eight kids sit in a circle playing a game in which they pick an activity card and a card showing a classmate's face. Children earn cheers as they perform the designated activity with that classmate (giving Olivia a high five, hugging Alex). Instead of tangible rewards, shouts of encouragement, a sense of accomplishment and what Greenspan calls the "warm, pleasurable

feelings" that come from human interaction serve as a reinforcement for learning. In a classroom of 11-to-14-year-olds, kids are asked to stand in a narrow row between two strips of blue crepe paper representing water. The challenge: to arrange themselves in height order without stepping over the lines and falling "off the boat." The task combines communication skills, problem solving and visual, spatial skills. Teachers at CTC are trained to work on sensory issues and use the principles of occupational therapy throughout the day, Osgood explains, rather than in a separate program.

At the core of CTC is Floortime, one-onone, child-directed play periods. In one such session, David, 6, goes down a slide again and again. Each time he reaches the top of the ladder, a teacher playfully blocks his way, leading this very passive child to make eye contact and make his wishes known.

"She wants him to move her hand or say 'Move' and be intentional," explains Lauren Blaszak, CTC's assistant director. "She's got an agenda; he doesn't know it. He keeps going back for more because it's fun." Building social interactions this way, she says, will make it easier for David to join circle games at school and sit at the dinner table at home.

Osgood worked in an ABA program for six years. "It does a great job with skills," she says, "but the kids lacked the ability to think on their feet, to problem solve and to engage socially." She also feels that the ABA emphasis on "looking normal" doesn't address the

reasons for behaviors like flapping and rocking: "Those are organizing strategies to cope with anxiety. Our philosophy is not to say 'Don't do that.' In DIR, we respect them for who they are but give them the tools they need for successful lives." Sometimes literally: Osgood tosses a boy a Koosh ball when he asks for something to fiddle with in his hand. Knowing to ask, she says, is part of learning to regulate oneself.

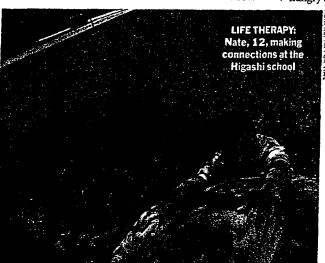
While Greenspan has published impressive long-term results, his critics say there's an absence of controlled, randomized studies. He is responding with a series of studies just getting under way at York University in Toronto. Among them is work that should help illuminate choices for struggling parents: imaging studies that will compare the brains of DIR kids with those treated with ABA. —With reporting by Amy Lemard Goehner

## The Most Difficult Decision of My Life

HEN MY 47-YEAR-OLD HUSBAND Fred lay dying in a hospital from a heart attack, I sobbed to my brother, "He can't die. Who will give Nate his shots?" Nate was our autistic son, then 5, and the injections were one of the myriad can't-miss cures we had tried in order to help him.

My husband died that night seven years ago, and I felt it was the end of the world for me, for our newly adopted 10-week-old son Joey and, most of all, for Nate, whose strongest connection was to Fred.

I learned to inject Nate. And when I decided a few months later that the shots weren't helping him, the decision to stop seeing that doctor (a doctor who had told Fred and me that Nate wasn't autistic and that he could cure him) was the most difficult one I had ever made without Fred.



The most difficult, that is, until I decided two years ago to send Nate to a residential school.

I enrolled Nate in the Boston Higashi School in Randolph, Mass., because I knew he was now capable of more (though I had no idea what "more" was). After years of day school followed by speech, occupational and behavior therapy, Nate had no master plan connecting everything. And I constantly worried that his ritualistic behaviors—like his insistence on sitting in the same seat in the last row of the city bus and crawling over anyone to get there—were never going to decrease.

During Nate's first week at Higashi, I got a call from his teacher asking me to send a pair of sneakers with laces. Why does he need laces when there's Velcro?, I wondered. "Because learning to tie shoes is a life skill," his teacher told me. It was an "aha!" moment for me—the first of many. Higashi is

committed to preparing students for lifelong inclusion in the community, soitsends the kids home, with detailed vacation goals, for eight weeks of the year. That way, they can generalize the lessons they learn in school.

Higashi was founded by Dr. Kiyo Kitahara, a teacher who believed in searching out the "bud of self-identity" in every autistic child and fostering it with loving care. Her program, Daily Life Therapy, is more like Floortime than like ABA (see "ATale of Two Schools") but takes its own unique approach. The first step is to get the child to develop a 24-hour rhythm through intense physical exercise. For example, a lot of autistic kids will eat only a few select foods, and many have difficulty sleeping through the night. At Higashi the kids jog twice a day on the theory that come mealtime, they'll be hungry enough to try new foods. And the

endorphins released during exercise reduce anxiety—which is good because Higashi does not permit the use of psychotropic medications.

All that exercise also means the kids are exhausted at the end of the day and tend to sleep through the night. Nate was always fine after he fell asleep, but oh, those endless routines leading up to bedtime! For eight years, he insisted on sleeping in the same red T shirt with a yellow taxi on it, his large toy keyboard piano laid across his chest, his stuffed animal placed on a chair facing him and the radio playing a 24-hour news station.

Believing that many autistic kids can be reached by tapping into their creative abilities, the teachers have nourished Nate's love of sports and music. And he has never seemed happier. I can see his rigidity loosening every time he comes home or I visit him at school. Even Joey has noticed the changes. Nate has always confused the pronouns I and you. One day during Nate's most recent vacation, Joey said to me excitedly, "Did you hear that, Mom? Nate said, 'I want to play' instead of, 'You want to play.' He's becoming unautistic!"

Nate's teacher called me last week. She told me that on the basis of Nate's athletic ability and leadership skills, he had been chosen to represent Higashi at the Special Olympics this summer at Harvard.

I sent Nate to Higashi because I knew he was capable of more. I know exactly what my husband would have quipped: "I can't believe Nate's going to Harvard!"

-By Amy Lennard Goehner

## SI In Education

# **Understand How Children Learn**

By Lee Pennington Neill, PhD

e learn to learn by organizing the information we receive. The first information we receive is sensory (skin, muscles, joints, gravity, smell, vision, hearing). We organize that information physically first. The first task of childhood is to be physically efficient. After all, our only tool for acting on the world is our physical body.

Children first need to become physically skilled, and their play demonstrates that need. Through play, they learn all about their bodies so they will be as safe and secure in the world as possible. This is true for all children, no matter what handicaps prevent full physical exploration of the world.

In the process of carrying on Nature's scheme (to be physically efficient, thus, safe in the world) children gather enormous amounts of data which is stored in their brains. In the conscious parts of the brain (the neocortex, including the left & right hemispheres), thinking occurs. Most people tend to think only of the conscious parts of the brain, forgetting that the abstract thought area of the brain is supported, fed, soothed, driven and assisted by lower (subcortical) structures. In childhood, those "below the cortex" structures of the brain serve as assistants in the organizing process, helping get the information, sorting it out, analyzing, testing, playing with it, "making sense" of it.

In the conscious neocortex, the left hemisphere is interested in data that is related to symbolic and verbal communication; understanding sequences; analyzing specifics; initiating sequences of activity; focusing. It is thought of as the language hemisphere because of its interest in analyzing symbolic communication.

The right hemisphere is interested in information that is visual and spatial in nature; holistic and global; intuitive and emotional. It is concerned with maintain-

ing and improving the quality of motor activity. It scans. The right hemisphere is considered our non-verbal hemisphere because it is concerned with the non-verbal aspects of communication: facial expression, postural or body language cues, tone of voice, movement. Approximately 70 percent of our communication is non-verbal.

## Learning:

Essentially, organization of information and adaptation of that information to any situation.

For children to learn as efficiently and adaptively as possible, they must have instant access to both ways of perceiving the world. Sometimes it is important to focus on specific details (left hemisphere); sometimes it is best to scan and get "the big picture" (right hemisphere). Ideally, we are built to have two ways of knowing about the world--each very important and valuable. Certain structures which assist in the sharing of information between the left and right hemispheres are not mature until the end of the first decade of life.

Our schools today, emphasizing "testable" or quantifiable skills, seem to focus greatly on the kinds of skills which the left hemisphere best assists. The best schools offer a balance, assisting children to both focus and scan, analyze and intuit, listen and experience.

Children don't use their brains the same way that adults do. Lower centersthose concerned with drives, movement, emotion, smell, gathering of information for recall--are busy seeking out information to organize and make sense of the world. The child's picture is incomplete-their brains, seeking information to help them best adapt to a world not yet fully experienced, tend to be attracted to experiences that they can physically experience. Adults, with years more experience and maturation of their neural structures, perceive and act on the world in more abstract, less physical ways.

Parents and teachers need to frequently remind themselves that they do not perceive the world the same way that their children do. We often make judgments based upon our own perceptions, not remembering that our pictures are different, our focuses different. The only way we can begin to bridge the gap between how we think and how kids think is to WATCH.

If we watch children at play, in nature, in school, at work, we'll see their need to physically experience, to experiment, to "mess around" to play and interact with the world. If we ignore our verbal prowess and attend to the spatial, movement-oriented, intuitive and global kinds of processes children use to help themselves gain knowledge, we'll best help them. We need to "be still and learn," comfortable that, in not interrupting this very old scheme, we're helping more than when we try to direct their activities with our grown-up brains.

Lee Pennington Neill, PhD is an educational psychologist practicing in Santa Barbara, California and president of the SII Board of Directors.

# Parent's Page

# Tactile Defensiveness: Some People Are More Sensitive

By Zoe Mailloux, MA, OTR

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weepy, angry, etc."

Last issue we presented the sense of touch and its relationship to the development of numerous skills and functions. This issue we'll discuss a condition that occurs when one aspect of the touch or tactile, system is not working well.

One important role of our touch system is its protective function. Our tactile sense alerts us when something is sharp, not, cold or in some other way may present a danger. We learn to "notice" those hings which may represent harm or danger and respond by moving away from hem.

For some individuals, lowever, the aspect of he touch system which istinguishes between otentially harmful and armless "messages" oes not work nortally. Occasionally we te children who have n underactive sense irritable, withdrawn, f touch. These chilen do not seem to el pain as much as hers and often seem naware of tactile sensations at should be noticeable. More com-

on, however, is a condition of inconsisnt responsivity or hypersensitivity to uch. Dr. Ayres was the first to describe is condition as tactile defensiveness.

An individual with hypersensitivity touch or tactile defensiveness appears overreact to sensation that most people n't particularly notice, or at least are t bothered by. Common signs of tactile fensiveness include: sensitivity to cern types of clothes or fabrics; preference aversion to foods which seems texture ated; avoidance of touching substances h as finger paint or mud, or of getting e's hands messy; avoidance of walking efoot on particular surfaces such as

sand or grass; a greater than normal resistance to having teeth brushed, hair combed or face washed; and a tendency to prefer to touch rather than be touched, especially when the touching is unexpected.

Because we do not usually think much about our sense of touch or that some people are more "sensitive" than others, many of these behaviors are often attributed to personality, emotional make-up, or behavioral tendencies. However, enough cases of tactile defensiveness have been documented for us to be confident that this is truly a neurologically-based condition which can create a great deal of dis-

comfort and even turmoil for the individuals who experience it and their families.

Our sense of touch is closely tied to our emotions. Perceiving frequent discomfort through this sensory system is likely to make an individual demonstrate emotionally potent reactions. Thus children who ex-

perience this condition are often described as irritable, withdrawn, weepy, angry, etc.

It's difficult to pay attention if a person is thinking about how his clothes feel, or how much it bothered him when someone brushed against his skin in line. Individuals who have this condition can cope with it better at some times than others. Stresses such as fatigue, illness, anxiety and even hunger often make the defensive reactions more severe.

Therapy aimed at reducing tactile defensiveness attempts to gradually elicit more normal reactions to various tactile sensations. The goal is to normalize the way the nervous system registers and interprets touch information.

## What You Carn Do To Help

The following are ways you may be able to help your child or other members of your family who seem to display tactile defensiveness:

- Light, ticklish touch is usually the most irritating. When you touch your child, attempt to use more firm and constant pressure. You may be able to help your child avoid light touch by asking the teacher if your child can stand at the front Or back of lines or at the end of a reading circle at eshool rather than in the middle.
- \* Firm, consistent pressure tends to override tactile irritation. This is why we naturally rub something that hurts and it is probably how hugging developed. Firm massage, wrapping with pressure (as in wrapping the arms or legs with an ace bandage) and gently "sandwiching" a child between cushions may be helpful.
- Pay attention to which fabrics, types of clothing, play substances, or social situations (e.g. walking through a crowded mall) seem to elicit negative reactions from your child. Until the problem is alleviated, try to avoid irritating situations (e.g. let your child wear all cotton clothes if this is what he prefers).

Avoid power struggles over this unless safety or some other critical issue is involved. It is easy to think the child with tactile defensiveness is trying to manipulate you or purposefully make your life difficult Believe him when they try to tell you something "hurts." There is a good chance that it does.

# Parent's Page

# The Vestibular System: Why Is It So Critical?

By Zoe Mailloux, MA, OTR

Of all the sensory systems that we talk about in sensory integration theory and treatment, the one that may be the most basic, yet the hardest to understand is the vestibular sense. This sensory system develops just a few weeks after conception and plays a very important role in a child's early development. It was also probably one of the most important senses for our evolutionary ancestors. However, the vestibular sense is not familiar to many people.

Children do not learn about it when they learn about the basic sensory systems and if adults know about this system they may only be aware that it has something to do with balance. Understanding more about the vestibular system will be helpful to a better understanding of the types of problems children may have as well as the methods we use to address these problems.

As we all know, there are portions of our eyes and ears which "take in" sights and sounds and send that information to our brain. The parts of the vestibular sense which "take in" information to be sent to our brain are located in the inner ear. One part is a set of fluid-filled canals which respond to movement and change of direction. The other part is a sak-like structure which responds to change of head position and gravitational pull. The information about movement and head position that comes in through these structures is sent to many different parts of the brain. This is one of the main reasons we are so concerned about this sensory system--it has so many different functions which are important to our ability to do so many things.

One important function of the vestibular system allows us to coordinate our eye movements with our head movements. This occurs in activities such as copying from a blackboard (looking up and then back down at our work), turning our head to watch a moving object (as in watching a ball move across a soccer field), and

even sometimes in looking across a page to read. These functions of the vestibular system probably help to explain why several studies have shown that up to half of the children with learning disorders show signs of vestibular dysfunction.

The vestibular system is also important for helping us to develop and maintain normal muscle tone. Tone is not the same as muscle strength, but it does allow us to hold our body in position and to maintain positions. The vestibular system is especially important in helping us to keep our head up. Many children with vestibular problems slouch at their desks,

hold their heads up with their hands and generally seem to have low endurance.

Balance and equilibrium are also very influenced by the vestibular system. In addition, our ability to coordinate both sides of our body together (as is needed in riding a bicycle or cutting with scissors) also require good vestibular function. Finally, some aspects of language seem closely related to the way in which the vestibular system processes information.

Considering all of these very basic and important functions, it is not difficult to see how a vestibular problem can create a very real yet often invisible problem.

## What You Can Do To Help

The following are some ideas that can be used to help the vestibular system develop and function normally:

- 1. Movement experiences are very important to the developing child. Be sure to make time for activities like swinging, sliding, riding the merry-gorounds at the park, etc.
- 2. Encourage active, child-propelled movements rather than passive movement (e.g. never spin, twirl or swing a child excessively or for prescribed lengths of time--this is sometimes erroneously recommended by individuals who quote, but do not understand, Ayres theories).
- 3. Experiment to see if your child has an easier time sitting up or doing his paperwork after physical activity (especially swinging or other movement activity). The vestibular system often has a fairly immediate effect on the nervous system, and for some children, these activities can make desk type work much easier.

- 4. Encourage activities in which the child lies on his stomach and holds his head up. Try playing with legos in this position, or have himthrow objects at a target while lying on his stomach on a swing.
- 5. Encourage "bilateral" or two sided activities such as jumping rope, swimming, biking, rowing, paddling, etc.

Too much swinging or spinning can have negative effects (overactivity, legarthy, changes in heartrate and breathing, etc.) Some children can not pace themselves very well and have reactions sometime after the activity. Discuss these activities with your therapist and plan appropriately



Sensory Integration Dysfunction (SID) is a neurological disorder pioneered 40 years ago by A. Jean Ayres, Ph.D., OTR.

As described in Williams &

Shellenberger's work entitled, How Does Your Engine Run? A Leader's Guide to The Alert Program for Self-Regulation, "Countless bits of sensory information enter our brain at every moment, not only from our eyes and ears, but also from every place in our bodies". The brain must organize and integrate all of these sensations if a person is to move and learn normally.

It is commonly held that we have five senses: touch - taste - smell - hearing - vision. These basic senses or far senses" respond to external stimuli from the environment. The truth is, we have many more senses than that. Some hold that we can divide the senses into internal and external senses: that the "sense of well-being" is a sense too, but an internal one. So too "homeostasis" or the sense of having returned to even keel, essential for the regulation of temperature, heart rate, and breathing.

Our mind and body are superbly interwoven to meet the demands of today's world. The feelings, thoughts and actions we experience occur through the complex actions of our brain. How we process environmental and internal information has a major impact on our feelings, thoughts and actions.

. This article will explain

sensory integration dysfunction to the point of understanding the nature of this unseen (and often misdiagnosed) disability, as well as its psychological, emotional, learning and social effects on the individual.

## **Types of SI Problems**

Problems of sensory integration were first thought to fall into three categories. The person either was thought to be under-processing over-processing processing with interference / "white noise"

This being the case, an accurate investigation had to be made to find out which applied to the client, because treatment strategies would differ.

## Types of SI Problems

Problems of sensory integration were first thought to fall into three categories. The person either was thought to be under-processing over-processing

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## Signs of SI problems

The following is a description of some of the commonly seen behaviors in children who exhibit sensory integrative difficulties.

- · An acute awareness of background noises
- Fascination with lights, fans, water
- Hand flapping/repetitive movements
- Spinning items, taking things apart
- Walking on tip-toe
- Little awareness of pain or temperature
- Coordination problems
- Unusually high or low activity level
- Difficulty with transitions (doesn't "go with the flow")
- Self-Injury or aggression
- Extremes of activity level (either hyperactive or under active).
- Fearful in space (on the swings, seesaw or heights).
- Striking out at someone who accidentally brushes by them.
- Avoidance of physical contact with people and with certain "textures," such as sand, paste and finger paints.
- The child may react strongly to stimuli on face, hands and feet.
- A child may have a very short attention span and become easily distracted.
- A strong dislike of certain grooming activities, such as brushing the teeth, washing the face, having the hair brushed or cut.
- An unusual sensitivity to sounds and smells.
- A child may refuse to wear certain clothes or insist on wearing long sleeves/pants so that the skin is not exposed.
- Frequently adjusts clothing, pushing up sleeves and/or pant legs.

Table 1. Symptoms of Sensory Integration Dysfunction. (Reproduced with permission from the Apraxia-Kids Web page)

Sensory Auditory	Symptoms  Responds negatively to unexpected or loud noises
	<ul> <li>Holds hands over ears</li> <li>Cannot walk with background noise</li> <li>Seems oblivious within an active environment</li> </ul>

Visual	<ul> <li>Prefers to be in the dark</li> <li>Hesitates going up and down steps</li> <li>Avoids bright lights</li> <li>Stares intensely at people or objects</li> <li>Avoids eye contact</li> </ul>
Taste/Smell	<ul> <li>Avoids certain tastes/smells that are typically part of children's diets</li> <li>Routinely smells nonfood objects</li> <li>Seeks out certain tastes or smells</li> <li>Does not seem to smell strong odors</li> </ul>
Body Position	<ul> <li>Continually seeks out all kinds of movement activities</li> <li>Hangs on other people, furniture, objects, even in familiar situations</li> <li>Seems to have weak muscles, tires easily, has poor endurance</li> <li>Walks on toes</li> </ul>
Movement	Becomes anxious or distressed when feet leave the ground  Avoids climbing or jumping  Avoids playground equipment  Seeks all kinds of movement and this interferes with daily life  Takes excessive risks while playing, has no safety awareness
Touch	Avoids getting messy in glue, sand, finger paint, tape Is sensitive to certain fabrics (clothing, bedding) Touches people and objects at an irritating level Avoids going barefoot, especially in grass or sand Has decreased awareness of pain or temperature

Attention, Behavior	Jumps from one activity to another frequently and it interferes with play
And Social	Has difficulty paying attention
	Is overly affectionate with others
	Seems anxious
	Is accident prone
	Has difficulty making friends, does not express emotions

When one sensory system does not adequately expand the neuron cell's dendrites and synapses, the inadequacies may limit the connecting neuron cell, and so on and so on.

"Sensory Integrative Dysfunction in Young Children" stated, "The ability to attend to a task depends on the ability to screen out, or inhibit, nonessential sensory information, background noises, or visual information." An individual with sensory integration dysfunction may respond to sensory input without this screening ability. This can produce distractibility, hyperactive, or uninhibited output. They may be unable to calm or console themselves and may overreact or be unresponsive to "far" sense stimuli. Attention and regulatory problems occur in the modulation, inhibition, habitation or facilitation brain processes.

. This is the fright, flight and fight response mentioned in the crossing the street example given earlier. An individual with sensory defensiveness typically has a "highly aroused nervous system which prepares the body for survival, but does not recognize that the input is non-threatening" (Stephens). The behavior exhibited by an individual in this category may be aggression, avoidance, withdrawal and intolerance of daily routines. Sensory defensiveness can occur in the auditory, visual, vestibular or tactile senses.

. Children with sensory integration dysfunction may show problems in their activity level. 'The child may appear disorganized or lacking purpose in his or her activity. The child does not explore the environment or lacks variety in play activities. He or she may appear clumsy and has poor balance. The child may have difficulty calming down after physical activity or seeks excessive amounts of sensory input" (Stephens). These characteristics can come from improper functioning in any of the sensory systems or a combination of them.

. A child may exhibit negative behaviors that have an underlying cause. The child may "lack flexibility, be explosive, or have difficulty with transitions". The child may show unexplainable irritability or crying until the discovery of the underlying cause.

Underlying causes could be that the child is fearful of certain sounds or visual stimuli or intolerant to the wrinkles in his or her socks.

In light of the problems that may develop due to sensory integration dysfunction, it is no wonder a child may lack emotional stability and social skills. The way a child behaves or interacts influences how individuals will interact with them. A child with sensory integration dysfunction may feel insecure in completing daily tasks because of their uncertainty of the environment. The fact that sensory integration dysfunction is generally not a visible disability, the child may be treated unfairly or the disability not be given consideration. All of us depend on adequate sensory integration to carry out daily tasks in work, play and self-maintenance. Disorders in the sensory integration domain greatly influence our ability to function, but also can be so subtle that they easily go unrecognized.

### **Sensory Modulation**

, which means that the person cannot properly regulate his sensory input, and that the ability to maintain a situation-appropriate state is faulty. i.e. just as the eye should respond differently to bright light and to darkness by adjusting the aperture of the pupil, so should the acuity of sensory processing fit the sensation. But these children and adults have senses that respond with random and variable effectiveness. - i.e. are ineffective for learning.

## SI is the organization of sensations for use

.These sensations need to be acted upon, organized and co-coordinated if a person is to learn efficiently. If these sensations can be well managed, the brain can form perceptions, then concepts and derive meanings, and so can learn.

The flow of sensations into the brain activates brain potentials, and one can think of sensations as "food for the brain providing energy" as well as "knowledge needed to direct the body and mind".

Sensory deprivation is a state where the senses are deprived of stimulation totally or severely, e.g. where the subject is placed in a soundproof room, with no light at all, and no touch sensations. In these experiments, the subjects have been found to very quickly become disorientated, and show signs of severe mental disturbances.

Studies like these lend weight to the theory that sensory input is essential for adequate brain function - that the stimulation produces "brain tone". They are responsible for the "alpha" or baseline brain waves of the conscious state. Dr A Tomatis and others believe that auditory input is the most vital sensory input for this function.

It is easy to conceptualize that the sensory system provides the input that stimulates the Reticular Activation System of the brainstem to arousal. The RAS is responsible for the regulation of alertness, and coordination and regulation of focus (attention) and the efficient management of input and of output. The proper functioning of this system is essential to learning and to behavior management.

#### **Efficiency of Modulation**

What needs to be done is to bring the sensory modulator up to a level of efficiency, and then there is less sensory overload evident. This may be one of the reasons that AIT is helpful for hyper-acute hearing, since it works to stimulate auditory sensory processing.

We can better understand the role of AIT in the treatment of learning and developmental problems, if we understand the concept of SENSORY INTEGRATION.

Communication is an all-encompassing activity, but the aspect that overlaps with the concept of SI, refers to the processing of the stimuli delivered to the nervous system by the sensory end organs.

#### The Ear

The importance of this aspect of sensory process to teaming disorders, concentration and emotional well being has been demonstrated repeatedly in research and practice, and mention should be made of the contribution of Harold Levinson ("Smart But Feeling Dumb").

However, the other equally crucial part of the ear, the cochlea, with its auditory function, is not of lesser importance in sensory integration. Focus on its role in learning and development has not been on auditory sensory integration. Audiologists, who deal with hearing issues, have dealt almost totally exclusively with hearing loss, and disorders of the cochlea that lead to degrees of deafness.

Auditory sensory integration has scarcely received mention. The information about the role of audition in neurological development and in emotional well-being has come from other sources, such as music therapy, and also from a French Ear-Nose and Throat specialist, whose work - has contributed a greater understanding of this matter.

Dr. Tomatis's theory of auditory development suggested that the individual whose ability to "stretch out his ear" to listen is impaired for some reason, will suffer developmental problems, whether autism, dyslexia, or speech and language disabilities, and perhaps emotional problems. Dr Tomatis's approach was a breakthrough in many ways, and here it is relevant to mention that he saw the role of the ear as a whole - both the vestibular as well as the cochlea - in the development of higher cognitive functions.

Occupational therapists who work with SI techniques, have reported changes across modalities, - e.g. speech may improve when the child is swung and bounced! Developmental optometrists, doing eye-integration and coordination exercises, have seen profound changes in speech and responsiveness...

This invites us to look into the function of that part of the brain that does sensory processing: the brainstem or mammalian brain, including the areas called the midbrain, the pons, the medulla, the cerebellum and the limbic system.

#### The Balanced Sensory Diet

Carol Kranowitz informs us that "Just as the five main food groups provide daily nutritional requirements, a daily sensory diet fulfills physical and emotional needs". As explained earlier, stimulation of the "near" senses (tactile, vestibular and proprioceptive) leads to the growth of the neuron cell's dendrites and synapses. A sensory diet includes a combination of alerting, organizing and calming techniques that lead directly to the "near" senses.

That fear is normal, but it does not help the child. We must consider the identification of sensory integration dysfunction as a benefit because a child can get help before the problem turns into a serious learning disability. The psychological, emotional, learning and social effects of sensory integration dysfunction on an individual may be reduced with proper sensory integration treatment and an understanding from the medical and professional fields.

# S1 Dysfunction vs. Attention Deficit Disorder:

# A brief comparison of two "look-alike" disabilities

By Carol S. Kranowitz, M.A.

Posted on www.sinetwork.org 5/00

In my book, The Out-of-Sync Child, I define Sensory Integration Dysfunction (DSI) as the "inefficient neurological processing of information received through the senses, causing problems with learning, development, and behavior." Picture a child who has trouble processing and interpreting sensory messages about how things feel and what it feels like to be touched. Touch stimulation overwhelms this oversensitive child.

How does his problem play out? He is bothered by the label in his tee-shirt, the approach of a classmate, the lumps in his mashed potatoes, and the stickiness of the play dough. Fidgeting and squirming, he pays a lot of attention to avoiding these ordinary sensations. Meanwhile, he is unable to pay much attention at all to the teacher's words or to playground rules.

Say a child with another form of SI dysfunction has trouble processing movement and

balance sensations. Say this under-responsive child needs to move around — much more than her peers — in order to rev up and get going. What is the fallout of her problem? This impulsive "bumper and crasher" craves intense, vigorous movement. She often rocks, sways, twirls, jumps, climbs, leaps, gyrates and gets into upside-down positions. She pays a lot of attention to satisfying her need for movement, and not much attention to her mother's instructions or to where she left her shoes.

Now consider my definition for Attention Deficit Disorder (ADD): "a neurological syndrome characterized by serious and persistent inattention and impulsivity. When constant, fidgety movement (hyperactivity) is an additional characteristic, the syndrome is called Attention Deficit Disorder with Hyperactivity (ADHD)."

In my book, I discuss other "look-alike" conditions which share symptoms with sensory integration dysfunction (pp. 17-20). SI Dysfunction may look like ADHD, and some symptoms may overlap. However, optimum treatment for the two problems is different. Before jumping to conclusions and leaping to drug therapy, parents and professionals need to look at the whole child. Then, we can thoughtfully determine what will help the most.

If the child is frequently – but not always – inattentive, it is useful to ask some questions: Where, when, and how often does this inattention occur? What is the stimulus? What does the child do as self-therapy? What is happening – or not happening – when the child concentrates well? What does the child need, and what helps?

An overloaded child needs less stimulation. So, dim the lights and turn down the radio. Comfort him with "deep pressure" bear hugs. Help him fix up a retreat, with pillows and blankets, under the dining room table.

An under-responsive child needs more sensory stimulation. So, take her to the playground each day, jog together around the block, engage her in gentle roughhousing, and provide her with a chinning bar, a punching bag, and a trampoline.

SI Dysfunction is a neurological problem, which affects behavior and learning. Medicine doesn't fix it. One needs a therapeutic sensory program that addresses the child's underlying difficulties processing sensations rather than just the symptoms of inattention, not psycho stimulants. A therapeutic sensory program may be a major component in treating the child with an attention problem. Taking a conservative approach can't hurt and often helps the inattentive child whose problem is not ADD, but developmentally delayed sensory processing.

An overview of processing deficits

For more information on sensory integration disorders, I highly recommend reading the book by Carol Stock Kranowitz, called The Out of Sync Child.

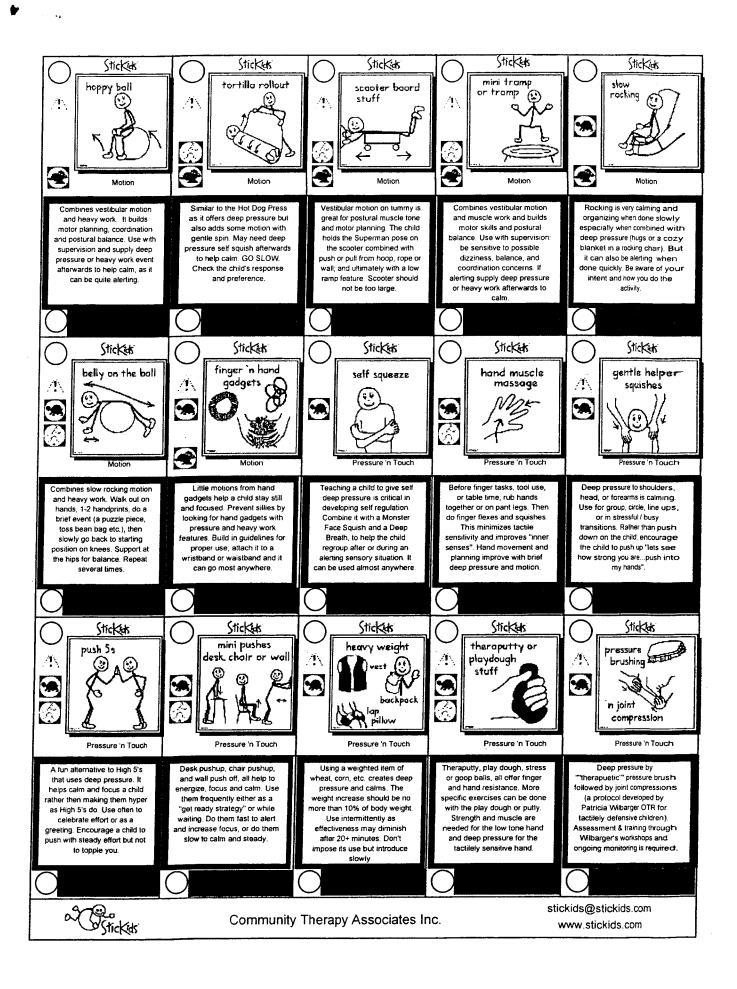
Our products that improve and spawn neural connections by increasing sensory input are our therapeutic music and light and sound programs.

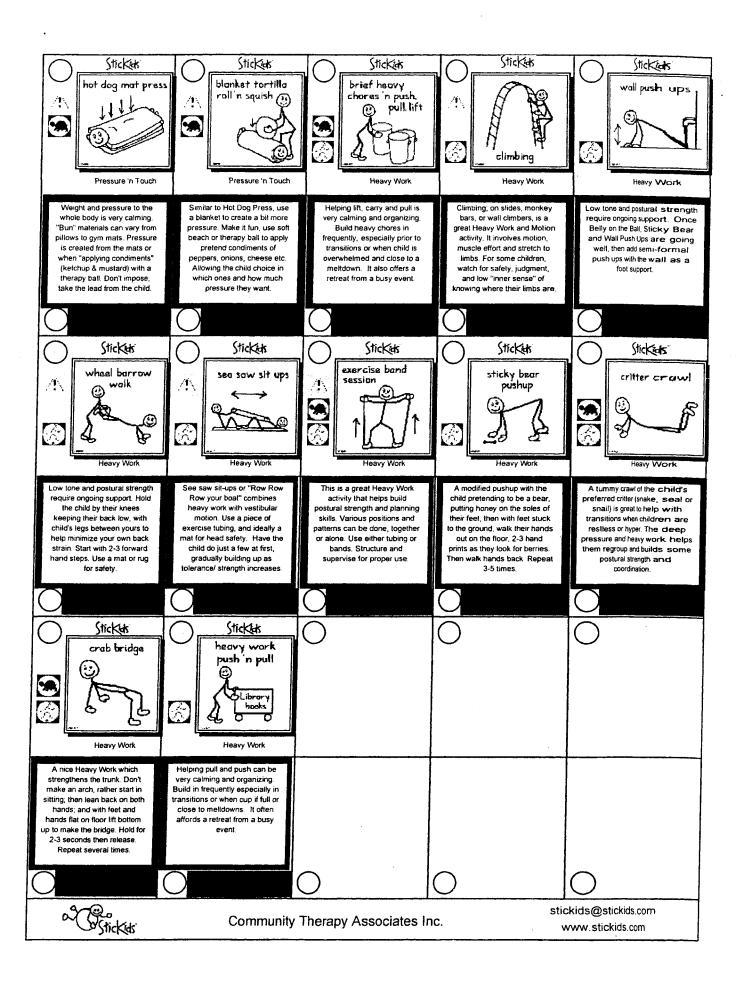
Our cognitive training programs and Edufeedback system were designed to directly challenge students to build the neural networks necessary to pay attention.

Our nutritional supplement **(Attend)** naturally improves the bodies' ability to allow smooth, balanced information processing to obtain a focused attention and improved concentration. Attend also helps increase the flow of nutrients, oxygen and energy to the brain.

#### Search the home page for the products that meet your needs and interests

For info related to brain plasticity and new brain research. The brain can heal and be revitalized with new neuropathways.





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The California Department of Education is committed to accountability for the achievement of all students. This guide answers questions about tests that students take in school to measure achievement. These are not tests to determine eligibility for special services, but tests that all students take.

#### What is achievement testing?

Achievement testing is a form of assessment; and assessment involves collecting information about student knowledge, skills, or abilities. Teachers collect information about students to make decisions about how and what to teach. An informal assessment may consist of watching a child solve a problem or play with others. Conducting an achievement test is a formal assessment.

#### What are typical kinds of tests?

Schools give various types of tests.

Achievement tests measure what a child has learned. Performance tests may require students to carry out a task; for example, a science experiment or class project.

Aptitude tests examine a student's potential for future academic work.

#### Why are tests given?

There are several reasons for testing your

child. One reason is to show how much a student has learned. Another is to reveal how successfully a school has educated students.

Tests tell the teacher about student progress. The results help teachers improve instruction by customizing it to fit the child's needs. School results allow the public to compare schools or school districts.

#### Hasn't my son or daughter been tested enough already?

Much information was collected to see whether your child was eligible for special education services. Ongoing testing is needed to continue meeting your child's needs.

#### How can more testing help my son or daughter?

Teachers use tests to plan instruction for your child. Without test results, teachers have less information to make decisions.

#### Doesn't testing take time away from instruction?

It takes time to assess student learning and to make decisions. Time spent on testing can improve instruction. Tests help teachers judge whether their standards are high enough and whether students are learning what they need to succeed.

When tests show a weakness, teachers can provide the needed instruction. Teachers can build on strengths identified by tests. Time spent on assessment is time well spent.

#### What is statewide testing?

The state can require testing. For example, California's Standardized Testing and Reporting (STAR) program requires that all students in grades 2 through 11 take the Stanford Achieve-

ment Test. Ninth Edition, each year in the spring. This test has various uses, including:

- Comparing a child's or school's score to some group (for example. a nationally representative group)-
- Showing how well the child has mastered the skills expected of all students
- Showing how well the school has taught the skills expected of all students
- Showing how well the child has attained proficiency

# Why should my child take part in the statewide test?

Without test results, teachers are less able to make good decisions about the instruction that your child needs. Statewide tests give another picture of how your child performs in a group setting. The results provide normative information on the progress of all students and how individual districts are performing.

#### But won't my child be at a disadvantage?

Students with disabilities can be appropriately included in statewide tests. Many students with disabilities can take tests under the same conditions as those of their non-disabled classmates. Some students with disabilities should take tests with accommodations. A small number of students with significant issues should not take statewide tests as other students do, even with accommodations. An alternate test is needed to include these students in the school accountability system.

Accommodations used in the classroom should be used during testing, if appropriate. The goal is to level the playing field. Accommodations should help students with disabilities show what

they can do. Students with disabilities may take the STAR test with appropriate accommodations, as described in a student's individualized education program (IEP).-

What accommodations are allowed in testing?

Certain types of accommodations are sometimes provided to students with special needs. These accommodations are as follows:

- Braille test. A visually impaired student may complete a Braille version of the test.
- Flexible scheduling. The test may be administered with changes in the standard schedule for testing. These changes include extending the testing time or extending the testing over more sessions.

- Flexible setting. Tests may be administered in small groups, in a separate location, or with the use of special lighting.
- Large-print test. The test may be printed in a larger print size than the standard.
- Out-of-level testing. The child may take a test appropriate for a different grade level than the one in which he or she is enrolled.
- Revised test format. The test booklet may be changed by increasing the space between questions or by reducing the number of guestions on a page.
- Revised test directions. The directions for administering the test may be changed by emphasizing key words or simplifying the language.
- Aids and/or aides. The student may have help or special equipment to enhance vision or hearing; masks to cover a portion of the test; markers to maintain a place; assistance to repeat questions, to read, or to sign passages; cues to maintain on-task behavior; equipment to record responses; or communication boards to enhance the student's ability to answer questions.
- Are all accommodations that are used during instruction allowed for testing?

Accommodations used in testing should not give students with special needs an unfair advantage. For example, it may not be appropriate to read a reading test to a student. Decisions about accommodations depend on the type of test.

An accommodation should be considered if it:

- Is based on the child's need;
- Is already provided in the child's instruction;
- Does not give an unfair advantage;
   and
- Does not change the nature of what is being tested.

#### Who decides whether accommodations are used and, if so, which one(s)?

Persons familiar with the test and with the student should make decisions about accommodations. The individualized education program (IEP) team made up of parents, the classroom teacher, the program or school administrator, and specialists is in the best position to make these decisions.

#### How do I learn more about test accommodations?

For more information, contact your child's teacher, counselor, or principal. California guidelines for participation of students with disabilities in the Standardized Testing and Reporting (STAR) program are on the web:

http://www.cde.ca.gov/spbranch/sed/assess.htm

California Department of Education Special Education Division

Assessment, Evaluation, and Support Unit P.O. Box 944272 Sacramento, CA 94244-2720

#### **ACCOUNTABILITY**

# 1. Are students with disabilities required to participate in a State's accountability system?

Although IDEA makes no specific reference as to how States include children with disabilities in the State accountability system, the IDEA requires States to establish performance goals and indicators for children with disabilities—consistent to the maximum extent appropriate with other goals and standards for all children established by the State—and to report on progress toward meeting those goals. The State of California has an alternative state assessment which is the CAPA for students whom are not able to take the standardized state level evaluation.

Under Title I of the Elementary and Secondary Education Act, in the 2000-01 school year, each State must have a State assessment system that serves as the primary means for determining whether schools and districts receiving Title I funds are making adequate yearly progress toward enabling all students in Title I schools to reach high standards. All students with disabilities in those schools must be included in the State assessment system, and the scores of students with disabilities must be included in the assessment system for purposes of public reporting and school and district accountability. Under Title 1, State assessment systems must assign a score, for accountability purposes, to every student who has attended school within a single school district for a full academic year. And, States must explain how scores from alternate assessments are integrated into their accountability systems. <sup>2</sup>

#### 2. How do States and LEAs use their assessment results?

Under IDEA, States must use information about the performance of children with disabilities in State and district-wide assessment programs to revise their State Improvement Plans as needed to improve their performance. Under Title I, States and LEAs also use the results to review the performance of LEAs and schools, respectively, and to identify LEAs and schools in need of improvement. States and LEAs also use results for rewards and sanctions for schools and districts, and some for decisions about student promotion or graduation. Assessment results can also be used in planning teacher training, summer school and after school programs, and in reviewing alignment between assessments and curriculum. These are State and local district decisions. In addition, IEP teams can consider individual assessment results as they develop programs for students with disabilities.

#### **IEP PROCESSES**

# 3. What is the role of the IEP team in determining whether the child will participate in general or alternate assessments?

The IEP team determines <u>how</u> the child participates in State and district-wide assessments of student achievement. The IEP team determines if any individual modifications in administration are needed in order for the student to participate in the assessment. If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), the IEP team states why the assessment is not appropriate for the child and how the child will be assessed. IEP teams should have the level of expertise needed to make these decisions in an effective manner.

# 4. May IEP teams exempt children with disabilities from participating in the State or district-wide assessment program?

No. The IEP team determines HOW individual students with disabilities participate in assessment programs, NOT WHETHER. The only students with disabilities who are exempted from participation in general State and district-wide assessment programs are students with disabilities convicted as adults under State law and incarcerated in adult prisons (34 CFR §300.311(b)(1)). With this statutory exception, there should be no language in State or district assessment guidelines, rules, or regulations that permits IEP teams to exempt students from State or district-wide assessment programs.

Section 504 prohibits exclusion from participation of, denial of benefits to, or discrimination against, individuals with disabilities on the basis of their disability in federally assisted programs or activities. Title 11 of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be-denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by such an entity.

Inclusion in assessments provides valuable information which benefits students either by indicating individual progress against standards or in evaluating educational programs. In some States, participation in assessments is a means to access benefits such as promotion and graduation. Given these benefits, exclusion from assessment programs based on disability would potentially violate Section 504 and Title II of the ADA.

5. Can the IEP statement of how the child will participate in State and district-wide assessments of student achievement be changed without reconvening the IEP team?

No. If the IEP team wishes to modify a provision of the IEP, it must meet again to make the change.

#### PARENTAL PERMISSION

6. Is parental permission required for children with disabilities to participate in State and district-wide assessment programs if parental permission is not required for the participation of non-disabled students?

No. If parental permission is not required for participation in the State and district-wide assessment programs for non-disabled children, it is not required for children with disabilities. However, parents of children with disabilities as members of the IEP team will be involved in IEP team decisions on how an individual child will participate in such assessment programs.

7. If a State permits parents of non-disabled children to choose not to have their child participate in State or district-wide assessments, do parents of children with disabilities have the same right in regard to assessments and alternate assessments?

Yes. Parents of a child with a disability should have the same right to "opt out" as parents of non-disabled students consistent with any allowable justification criteria established by the SEA or LEA. Denying parents of children with disabilities the same rights afforded parents of non-disabled children would raise concerns about discrimination on the basis of disability. However, parents and students should be informed of the consequences of participation and non-participation in State or district-wide assessments. For example, parents should know that State and district-wide assessments can improve accountability and promote services that better meet the needs of the participating students, while non-participation may limit opportunities for promotion, graduation and access to programs. Parents should not be pressured to "opt out" of assessment programs. Most States already keep track of students who are "opted out" of assessment programs by parents. States and districts should keep track of parent-requested "opt out" exemptions for students with disabilities disaggregated from those for students without disabilities. This should help the State to determine if "opting out" pressure is occurring.

#### ACCOMMODATIONS AND MODIFICATIONS

8. The words "accommodations" and "modifications" are both used in the federal statute and regulations, but the precise meanings are unclear. Will OSEP differentiate the two and explain the relationship between them?

There is no universal agreement about the definitions of these terms, but OSEP recognizes that there has been an evolution of assessment terminology and increased agreement about such terminology since the IDEA Amendments of 1997. When referring to assessments, the term "accommodation" is commonly used to define changes in format, response, setting, timing, or scheduling that do not alter in any significant way what the test measures or the comparability of scores, hi contrast, when changes in the assessment alter what the test is supposed to measure or the comparability of scores, terms such as "modification", "nonstandard administration", "non-approved or non-agreeable modifications" are often used. However, some States use the terms "modification" or "modified" to refer to changes commonly thought of as "accommodations."

The IDEA statute and regulations use the terms "accommodations" and "modifications in administration" in connection with State and district-wide assessment programs and assessments of student achievement. And, the Analysis of Comments and Changes that accompanied the publication of the final regulations uses the terms "individual modifications" and "necessary modifications" as well. However, the definitions of these terms as used in the statute and regulations are not intended to correspond with the evolving usage of these terms in the field of assessment as discussed in the previous paragraph. For example, 34 CFR §300.347 requires that IEPs include a statement of "modifications in the administration" of assessments of student achievement. In this context, "modifications in administration" should be viewed as a general term that would include both accommodations and modifications, as they are commonly used in assessment practice. Further, 34 CFR §300.138 requires that children with disabilities be provided with "accommodations and modifications in administration, if necessary", which would include the full range of accommodations and modifications, as they are commonly used in assessment practice.

9. Can the SEA or LEA limit the authority of the IEP team to select individual accommodations and modifications in administration needed for a child to participate in the assessment?

No. 34 CFR §300.347(a) (5)(l) requires that the IEP team have the responsibility and the authority to determine what, if any, individual modifications in the administration of State or district-wide assessments of student achievement are needed in order for a particular child with a disability to participate in the assessment. If the IEP Team determines that individual modifications in the

administration of State or district-wide assessments of student achievement are needed, the Team must include a statement of any such modifications in the IEP. In addition, §300.138(a) requires that appropriate accommodations and modifications in administration of State or district-wide assessments must be provided if necessary to ensure the participation of children with disabilities in-those assessments. As part of each State's general supervision responsibility under §300.600, it must ensure that these requirements are carried out. States that have developed a comprehensive policy governing the use of testing accommodations (including the conditions and instructions for appropriate use of specific accommodations and how scores are to be reported and used) need to ensure that they are consistent with this IDEA requirement

At the same time, IEP teams need to understand and consider the implications of SEA/LEA policies on the reporting and use of scores in addressing what individual modifications and accommodations are appropriate for an individual child with a disability. SEAs and LEAs should carefully consider the intended and unintended consequences of accommodation policies that may impact on student opportunities such as promotion or graduation (e.g. receipt of a regular diploma, a certificate of attendance, etc.). Parents and students need to be fully informed of any consequences of such policies.

A major challenge for assessment programs is how to maintain assessment rigor (reliability and validity of assessments), implement and protect the individual rights of students, and simultaneously ensure that schools teach all children what they need to know and to do (knowledge and skills). Much of the current research on accommodations and modifications is inconclusive, so in many cases the impact of specific accommodations is not known. Continued research is underway, and more is needed.

A number of legal principles and concerns apply if a student may be denied benefits such as promotion or graduation because of questionable validation of accommodations. One solution suggested by the National Center on Educational Outcomes (NCEO) at the University of Minnesota is to collect and use additional evidence that allows the student to demonstrate competency in lieu of a single test score. Further information is available from the NCEO (612-626-1530; http://www.coled.umn.edu/NCEO).

#### ALTERNATE ASSESSMENTS

#### 10. What is an alternate assessment?

Generally, an alternate assessment is understood to mean an assessment designed for those students with disabilities who are unable to participate in general large-scale assessments used by a school district or State, even when accommodations

# 22. Are performance results from alternate assessments required to be aggregated with data from general assessments?

It is important for States to report performance data from alternate assessments in a way that ensures that all children with disabilities are included in the accountability benefits of State and district-wide assessments. Thus, OSEP encourages States to aggregate scores from the alternate assessment with scores from the general assessment whenever appropriate.

#### 23. What is meant by "statistically sound" in 34 CRF 300.139?

There are at least two issues for consideration. One has to do with the sample size. In some instances, for example if a State chooses to disaggregate by disability categories (not a federal requirement) or report on the performance of students with disabilities in small school districts, the relatively small number of students in that category or district might raise questions about statistical soundness if generalizations are to be made about student performance. A second issue centers around the reporting of performance for students who take nonstandard or modified administrations of an assessment. In such cases, there may be questions about the validity of the assessment and its comparability to the standard assessment.

OSEP is concerned about students with disabilities who are excluded from assessment reports because of questions about statistical soundness. Public reports are a key component of many educational accountability systems, and exclusion from these reports may deny students with disabilities the benefits of these systems and fail to hold schools and LEAs accountable for their performance. It is important for States, LEAs, and test developers to provide a range of modifications in administration that preserve the validity and comparability of assessments so that student performance can be fully reported. In cases where validity or comparability are found to be significantly weakened, full reporting may be achieved through the collection of additional evidence, as discussed under Question 9.

# 24. Can a State or local education agency provide individual performance results to its schools, or would this violate the requirement to avoid disclosure of performance results identifiable to individual children?

The reference to disclosure simply refers to the inappropriateness of public reports that deal with samples so small as to publicly disclose the performance of individual students, not to providing results to schools for students served by the school.

performance at the grade level at which the child is placed unless such reporting would be statistically inappropriate.

#### REPORTING

19. What reports on assessment are required by IDEA?

34 CFR §300.137 requires States to report to the Secretary and to the public every two years on the progress of the State and of the children with disabilities in the State toward meeting performance goals including performance on assessments, drop-out rates, and graduation rates. Additionally, 34 CFR §300.139 requires the SEA to report to the public, in the same frequency and detail as it reports for non-disabled children, on the number and performance results of children with disabilities participating in regular and alternate assessments and to include in those reports aggregated data that include the participation of children with disabilities together with all other children and disaggregated data on the performance of children with disabilities

20. IDEA refers to children with disabilities being included in "general State and district-wide assessment programs," but only requires that State education agencies report to the public on the participation and performance of children with disabilities on assessments. Are local education agencies also required to report to the public in a similar fashion?

The IDEA requirement is for reporting by the State education agency. Many States have similar requirements for local education agencies to report similarly on local assessment programs. Under IDEA, this is a State decision.

21. What are the requirements for aggregation and disaggregation of data? Are aggregation and disaggregation required at the State level only? State level and district level only? Or State level, district level, and site level?

Under IDEA, States must report aggregated data that include the performance of children with disabilities together with all other children and disaggregated data on the performance of children with disabilities. There is no requirement for disaggregation by category of disability, just disaggregation of the performance of children with disabilities separate from the performance of non-disabled children. These reports must be made with the same frequency and in the same detail as reports on the assessment of non-disabled children. For example, if school level results are reported, then school level results for students with disabilities generally must be disaggregated. It is the SEA's decision how to collect sufficient data from LEAs to meet the Federal SEA reporting requirement consistent with these provisions.

#### **OUT-OF-LEVEL TESTING**

#### 17. Is out-of-level testing by States acceptable?

"Out-of-level testing" means assessing students in one grade level using versions of tests that were designed for students in other (usually lower) grade levels. Some States allow out-of-level testing in an effort to limit student frustration and provide appropriate assessment levels. Although IDEA does not specifically prohibit its use, out-of-level testing may be problematic for several reasons when used for accountability purposes. 34 CFR §300.137 requires that the performance goals for children with disabilities should be consistent, to the maximum extent appropriate, with other goals and standards for all children established by the State. The purpose is to maintain high expectations and provide coherent information about student attainment of the State's content and student performance standards.

Out-of-level testing may not assess the same content standards at the same levels as are assessed in the "grade-level" assessment. Thus, unless the out-of-level test is designed to yield scores referenced to the appropriate grade-level standards, out-of-level testing may not provide coherent information about student attainment of the State or LEA content and student performance standards. Also, many assessment experts argue that out-of-level testing produces scores that are (even using transformation formulations) insufficiently comparable to allow aggregation, as required by 34 CFR §300.139. If out-of-level tests are used, IEP teams need training and clear information about the statistical appropriateness of administering such tests at each possible level different from the student's grade level.

Out-of-level tests may lower expectations for students, prevent them from demonstrating their full competence, subject them to a lower-level curriculum, and restrict their access to the general curriculum. Important goals of both IDEA and Title I are to maintain high expectations for all children and to ensure that teachers and schools are able to teach diverse learners. Students with disabilities are entitled to the same rich curriculum as their non-disabled peers.

One source for additional information about out-of-level testing is the National Center on Educational Outcomes (NCEO) at the University of Minnesota (612-626-1530; http://www.coled.umn.edu/NCEO).

#### 18. Can an out-of-level test be considered an "alternate" assessment?

Out-of-level tests are considered modified administrations of the State or district-wide assessments rather than alternate assessments, and scores on out-of-level tests should be converted to reflect performance at grade level and reported as

25. To avoid publicly disclosing performance results identifiable to individual students, can a State or local education agency adjust the administrative levels at which it reports these results? For example, can it report the alternate assessment at the district level even though the general assessment is reported at the school level?

Yes, but only if necessary to avoid publicly disclosing results identifiable to individual students.

#### **MONITORING**

#### 26. How will OSEP monitor compliance with IDEA 97 assessment requirements?

OSEP's Continuous Improvement Monitoring Process focuses on compliance and results. There are several mechanisms that OSEP employs to review a State's performance in these areas. Through the State's self-assessment and OSEP's data review, OSEP examines results-oriented data such as drop-out rates, graduation rates, and performance on assessments. These data will be used to determine the level of intervention of OSEP's monitoring activities.

Federal requirements related to assessment can be found at 34 CFR §§300.138 (Participation in Assessments), 300.139 (Reports) and 300.347(a)(5)(i) (Content of IEP). These requirements will be examined in several ways through OSEP's Continuous Improvement Monitoring Process. As part of the State's self-assessment process, information from State and district-wide assessment should be used by the State's monitoring Steering Committee to evaluate the State's level of implementation and performance. For example, States should examine in their self-assessment, the number of students taking the statewide assessments and the number participating in alternate assessments. Also, performance on assessments is an important indicator for a State to use in evaluating and improving results for children with disabilities.

As part of data collection in the SEA and in LEAs, OSEP monitors will review documents and interview regarding participation in State and district-wide assessments. OSEP will gather data to determine that the State has developed alternate assessments and provided guidelines for the participation of children with disabilities in alternate assessments. In addition, OSEP will review the extent to which alternate assessments are aligned with general curriculum standards. OSEP will gather information about participation of children with disabilities in Statewide and district-wide assessment programs, including information that is reported to the public - aggregated and disaggregated - in the same frequency and in the same detail as for non-disabled. Finally, OSEP will review whether the IEP team determines any modifications in administration in State or district-wide assessments.

#### Instructions for Completing the CAHSEE Waiver Cover Sheet

Student Identification Number: To maintain confidentiality, use the student's identification number only.

- 1. Describe the nature of the student's disability as identified on the IEP or Section 504 Plan. If the uniqueness or specificity of the disability would cause the student to be identified, leave this section blank.
- 2. Check whether a modification was used on the ELA test or Math test or both and then describe the modifications used on either or both portions of the CAHSEE.
- 3. Give the rationale as to why the modification(s) used to achieve the equivalent passing score on the CAHSEE was necessary to allow the student to access the exam.
- 4. Give a description of the accommodations/modifications the student uses regularly in the classroom and on other assessments.
- 5. Summarize the student's academic preparation and performance that demonstrates high school level achievement, including a description of the course work, in the subject areas tested by the CAHSEE. This summary may be limited to a description and information regarding course work in the subject area for which the waiver is requested (i.e., English Language Arts or Mathematics).

Sign the form to certify that the student has achieved the equivalent of a passing score using the modifications described in the form.

#### Instructions for Submission of Supporting Documentation

Submit all of the following supporting documentation:

- The IEP or Section 504 Plan reviewed and approved by the student's IEP team and parent and dated prior to the exam that indicates all of the accommodations and/or modifications that the student needs to access and participate in statewide assessments. PLEASE BLACK OUT STUDENT AND PARENT LAST NAME AND INSERT STUDENT IDENTIFICATION NUMBER.
- A certified transcript showing sufficient high school level course work either satisfactorily completed or in progress in a high school level curriculum sufficient to have gained the skills and knowledge otherwise needed to pass the CAHSEE. PLEASE BLACK OUT STUDENT AND PARENT LAST NAME AND INSERT STUDENT IDENTIFICATION NUMBER.
- 3. A copy of the CAHSEE Student and Parent Report showing the "equivalent of passing score."

# Smart Start: Participation of Students with Disabilities In General Statewide Assessments (General Requirements)

Overview I Key Points I Links

#### Overview

States possess discretion to decide whether to have a statewide or district wide assessment program and, if so, the frequency and educational purposes for the general assessment of students. Federal law directs states to conduct assessments in only limited circumstances related to grants to states and local school districts under various titles of the Elementary and Secondary Education Act. Participation in the federally sponsored National Assessment of Educational Progress (NAEP) is voluntary, and nearly all states participate. States are using the assessment results for a variety of purposes. Student accountability is one. Assessments also can help a state monitor the performance of school districts and school buildings, or modify curriculum. Yet, when states use such assessments, they must keep in mind a number of special considerations regarding the participation of students with disabilities.

#### **Key Points**

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source.

#### **OBLIGATION TO CONDUCT GENERAL STATEWIDE ASSESSMENTS -- IDEA**

• The IDEA does not compel performance of statewide or district wide assessments. However, in 1997, a new statutory provision required the inclusion of most students with disabilities in all general state or local assessment programs. 20 USC 1412(a)(17)(A). Relating to the same objective, another new provision added to the law in 1997 compelled states to establish performance goals for students with disabilities participating in such assessments. 20 USC 1412(a)(16)(B). The new law also created new reporting requirements. States must disclose to the U.S. Department of Education and the public the extent to which students with disabilities are participating in general assessments and how well those students do on the tests 20 USC 1412(a)(16)(C) and 20 USC 1412(a)(17)(B).

# OBLIGATION TO INCLUDE STUDENTS WITH DISABILITIES IN STATEWIDE AND DISTRICTWIDE ASSESSMENTS

OCR has always interpreted Section 504 and the ADA as mandating inclusion of all students with disabilities, not just those who are IDEA-eligible, in statewide and district wide assessments. See Joint Policy Memorandum on Assessments, 27 IDELR 138 (OSEP 1997), Accord Letter to Muhlenkamp, 30 IDELR 603 (OSEP 1998), (inclusion of students with disabilities in statewide and district wide assessments, with appropriate accommodations where necessary; is a requirement of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990). Additionally, provisions to the same effect were added to the IDEA under the 1997 amendments. Nothing in the IDEA or Section 504 prohibits states from also specifically mandating inclusion of students with disabilities in statewide or district wide assessments.

# COMPLIANCE WITH IDEA EVALUATION PROVISIONS NOT REQUIRED DURING PARTICIPATION IN STATEWIDE OR DISTRICTWIDE ASSESSMENTS

The detailed IDEA requirements governing assessments apply only to tests and other evaluation
materials used to determine Part B eligibility and special education needs. 34 CFR
300.532(a)(1). Highly individualized testing conducted for the purpose of diagnosis or instructional
planning differs considerably from large-scale group assessments of achievement. For that reason,
some of the IDEA procedural

requirements for the conduct of evaluations are irrelevant or counter-productive in the context of inclusion of students with disabilities in statewide or district wide assessments. Even so, principles of fairness and nondiscrimination are the foundation for all educational testing, and, as a result, they govern the participation of both disabled and non-disabled students in large-scale assessments, even if the regulations themselves do not apply.

#### INCLUDING THE SCORES OF STUDENTS WITH DISABILITIES IN ASSESSMENTS

- The IDEA regulations establish reporting requirements that compel inclusion of scores achieved by students with disabilities. Assessment of student achievement is an integral aspect of accountability and an essential tool for evaluating how well school districts, buildings and staff are performing. Historically, students with disabilities have been excluded from assessments being conducted for purposes of, among other things, evaluating school performance. To compensate for this shortcoming, the IDEA's reporting requirement provides that reports to the public must include the following information:
  - 1. Aggregated data that include the performance of children with disabilities together with all other children.
  - 2. Disaggregated data on the performance of children with

disabilities.

34 CFR 300.139(b)

CHALLENGES TO DECISIONS CONCERNING PARTICIPATION IN ASSESSMENTS

• According to OCR, when an assessment is not used for educational decision-making relating to the individual student, the student is not denied a benefit or service and there is no basis for a claim of disability discrimination under Section 504. See Virginia Department of Education, 27 IDELR 1148 (OCR Region XI 1997), (rejecting parents' claim that the district discriminated against the student by not allowing him to take a standardized test with an accommodation included in the student's IEP because the assessment was used to measure academic achievement across the country, but not for educational or placement reasons with regard to the individual student.) In contrast, if the assessment were also being used for purposes of placement in district programs, then Section 504 and ADA concerns would arise. See also Chatham (GA) County School District, 30 IDELR 727 (OCR Region IV 1999). It is not clear if the IDEA gives a parent the right to challenge, via due process, a decision concerning participation in general statewide or district wide assessments that are not used to make educational decisions. However, an assessment that has no implications for identification, placement or the provision of special education or related services does not seem to be within the jurisdictional authority of due process hearing officers under 34 CFR 300.507.

#### ASSESSMENT OBLIGATIONS OF STUDENTS IN CHARTER SCHOOLS

• States are required to ensure the participation of students with disabilities attending public charter schools in statewide or district wide assessments, there being no explicit exemption of public charter schools in the IDEA requirement for participation of students with disabilities attending public charter schools. 20 USC 1412(a)(17)(A). While the details will vary, based on governing state law, the general rule is that the operators of a charter school agree to meet certain accountability standards (i.e., educational outcomes or student performance standards) in exchange for relief from a variety of state laws and regulations. No state has the authority to waive compliance with federal laws, including the IDEA. The IDEA explicitly applies to students with disabilities who attend public charter schools, whether or not the enabling state law considers a school to be part of a school district. 34 CFR 300.2(b)(ii) and 34 CFR 300.3(h).

#### ASSESSMENT OBLIGATIONS OF STUDENTS IN PRIVATE SCHOOLS

• States are required to ensure the participation of students with disabilities attending private schools in statewide or district wide assessments, there being no explicit exemption for these students in the IDEA requirement mandating participation of students with disabilities in assessments. 20 USC 1412(a)(17)(A). Under the IDEA, states and school districts are responsible for ensuring that private schools accepting publicly placed students extend those students all IDEA rights and protections. 34 CFR 300.2(c)(1). The same rights and protections are extended to students who are privately enrolled because their parents allege a denial of FAPE. 34 CFR 300.2(c)(2). The IDEA obligates a state placing a student with a disability in a private school or facility to ensure that the student is provided an education that meets the standards that apply to education provided by the SEA and LEAs. 34 CFR 300.401(b).

# EXCLUSION OF STUDENTS WITH DISABILITIES FROM ASSESSMENTS AS A MATTER OF PARENTAL CHOICE

• The IDEA does not explicitly address whether the parent of a student with a disability has the right to exclude his child from participation in statewide or district wide assessments or alternate assessments. Because the team decides issues related to a disabled student's participation in general assessments (34 CFR 300.347(a)(5)), it is at least arguable that a parent may resort to due process to challenge a determination that participation is appropriate for the student. To the extent, though, that a parent wants the student excluded for reasons unrelated to appropriateness, state law controls. Some states allow for this exemption, while others do not.

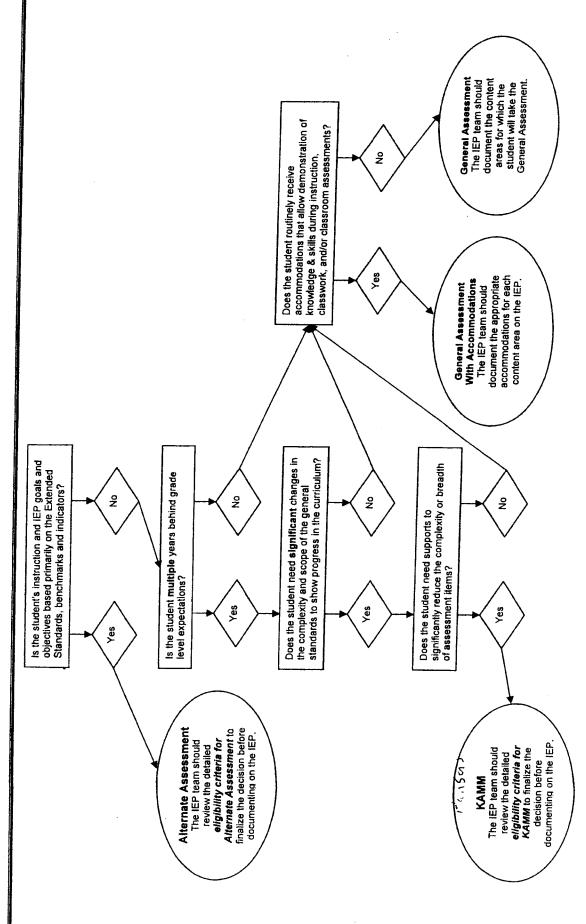
#### ASSESSMENTS OF STUDENTS WITH LIMITED ENGLISH PROFICIENCY

• The IDEA does not explicitly require states to conduct statewide or district wide assessments of students with disabilities who are limited English proficient in their native language. However, the native language requirements established by Title VI of the Civil Rights Act of 1964 apply when participation in statewide or district wide assessments are involved. Pursuant to Title VI, general assessments will have to be translated into the student's native language in appropriate instances. States will not be permitted to exclude students with disabilities from participation on the basis of their status as either LEP or SELEP'(special education LEP) students.

#### Links

Please share your experience and expertise. Forward any suggested additions or changes to this
or other Smart Starts to SmartStarteditor@lrp.com.

# Statewide Assessments Participation for Students with Disabilities IEP Team Decision Flowchart



	Stude	nt's Abilities	and Paraedu	ıcator Plan	
Specific Class Activity	What student can do without assistance (no para- eductor help)	What student cannot do and needs accommodation to complete	What student cannot do and needs assistance to complete	Identify areas to promote social acceptance and how peers will be utilized	Identify areas you will target for independence (should be identified in IEP)
Arrival/Time					
Period 1/Time					
Period 2/Time					
Period 3/Time					
Period 4/Time					
Lunch/Time					
Recess/Time					
Period 5/Time					
Period 6/Time					·
Period 7/Time					
eriod 8/Time					
eparture/Time				`	

		Plan for Parae	educator Ass	istance	
Specify Class Activity	Identify nee for paraeducate	to increase	independence will be	Total time needed for paraeducator support	Total anticipated time reduction in paraeducator support by annual review
					-

# Additional/Appropriate Student Support (aide) Job Description (delete or add information which is based on your students needs-which is documented by evaluations)

	, a 4 <sup>th</sup> grader in the Unified School District, is a special
educ	ation student diagnosed with He is currently on medication and
recei	ation student diagnosed with He is currently on medication and ving support services through County Mental Health. Over the past
Vear	has experienced success working with the additional classroom
year,	ort convices noted in his IED. The side who worked with him understand his
supp	ort services noted in his IEP. The aide who worked with him understood his
	ional and educational needs and supported the classroom teacher who
	ucted Brandon and his entire class. Staff who works well with,
	orts his class work and appropriate social interactions throughout the school
day is	s essential to ensure his continued success this next school year.
Sunr	oort Staff's Characteristic's and Duties
	aide must, on a consistent basis be able to:
_	Work well with general and special education teachers and follow their instructions on a daily basis.
<b>_</b>	Collaborate and follow the directives of the teacher to the whole class, by
	assisting "only when he requests help and or is demonstrating
	signs of frustration."
	Understand that the classroom teacher is the teacher for ALL the students in
_	the classroom and the aides role is to <u>support</u> the instruction with the student.
	Given directives from the classroom and special education teachers', work
	independently.
	Demonstrate an understanding; of their role as support staff, what
	(disability) is-how it impacts an(disability) student's
	emotional/educational needs, a willingness to learn, and ask for help or
	clarification as needed.
	Follow IEP as directed by teacher's, understand student's needs as defined in
	the assessments, and possess a working knowledge of the IEP document.
	Provide student with consistency of support as driven by the teacher's and
	student's IEP.
	Demonstrate ability and or willingness to follow a 'behavioral intervention
<del></del> .	plan,' support emotional upsets (as defined in a BIP or the IEP document),
	anticipate potential frustration-provide support in implimenting; calming
	techniques, redirect student as needed or requested by teacher, student
	talking a self time-out, utilizing problem solving techniques, based on
	appropriate BIP or Functional Analysis which is defined and adopted as part
[]	of student's IEP.
	Have 'PART' if student may require this intervention.
	To the best of their ability commit to the student for the entire year,
	understanding transitions and bonding are extremely difficult.

## **Support Staff's Characteristic's and Duties**

It is critical to note this is a description of a 'support staff' NOT an aide as traditionally defined.

The support staff must, on a consistent basis be able to:

u	Work well with general and special education teachers and follow their instructions on a daily basis.
	Collaborate and follow the directives of the teacher to the whole class, by assisting an individual student "only when he/she requests help and or is demonstrating
	signs of frustration as identified by the teacher."
	Understand that the classroom teacher is the teacher for ALL the students in the classroom and the 'support staff' role is to support the instruction with the student and implement the high degree of consequences and reinforcement.
	Given directives from the classroom and special education teachers', work independently following those directives and keep data as required by teachers and IEP.
	Demonstrate an understanding; of their role as support staff, what the student's disability is and how it impacts the student's educational needs(academic, social, behavioral), demonstrate a willingness to learn, and ask for help or clarification as needed.
	Follow IEP as directed by teachers, understand student's needs as defined in the assessments (training provided by school staff, including school psychologist, teacher's, special education staff, administrators), and possess a working knowledge of the IEP document.
	Provide student with consistency of support as driven by the teacher's and student's IEP.
	Demonstrate ability and or willingness to follow a 'behavioral intervention plan,' support emotional upsets (as defined in a BIP or the IEP document), anticipate potential frustration-provide support in implementing; calming techniques, redirect student as needed or requested by teacher, student talking a self time-out, utilizing problem solving techniques, based on appropriate BIP or Functional Analysis which is defined and adopted as part of student's IEP.
	Understand that the role of 'support staff' is to adhere to a developed fade plan, so student does not become dependent on adults. The intent of 'support staff' is to provide the assistance in implementing the high degree of reinforcement and implementing consequences.
	Have 'PART' if student may require this intervention.
	To the best of their ability commit to the student for the entire year, understanding transitions and bonding are extremely difficult.
	Collect comprehensive data on student as directed by BIP, classroom teacher, or special education staff.
	Student needs an individual who is: male/female, soft/loud voice, flexible/structured, personality traits of

# Parent Report and Homework Assignment

(Requested from all families to bring to first appointment at Area Board III)

List your child's relative strengths, special talents at home and school.
List relative weaknesses and areas of concern.
Write a brief paragraph describing your child. We usually do not have the privilege of meeting you child, so from a parent's perspective in your paragraph describe who your child is.
If we gave you a "magic" wand for your child and family and you could have anything your child needs, please list what you believe your child needs to be successful. We do encourage you to list everything, even if it seems fanciful.
Organize your documents in a binder. IEP documents, evaluations/assessments, letters, report cards, behavioral issues, medical information, other agency documents. File sections with the most recently dated documents on top.
Bring a picture of your child we can keep. Beyond the paperwork you bring we like to have your child's picture in front of their chart. This allows staff to see and remember who we have the privilege to serve.

Castellucci 2002

### Student Report

(to develop and share with team members' five days prior to the IEP)

List your relative strengths, special talents at home and school.
List your areas of need and concern.
Write a brief paragraph (or dictate to someone, or use a tape recorder) to express what services you need to be as successful as possible in school and beyond.
Write a brief paragraph about what did not work for you in the past.
If I gave you a "magic" wand for you, what would you ask for, what your goals and desires are, and what would the magic wand do for your life at school.
Remember it is your parent's decision whether you attend the IEP meeting; however the school will encourage you to attend the meeting. As you learn to self advocate remember you have some say in "how" and how much you participate or not at all.

Student report, Castellucci 2002

Learning styles researchers Walter Barbe and Raymond Swassing' present three modes of sensory perception (ways of remembering) that we all use in varying degrees. These are referred to as modalities. The most easily recognized modalities are: auditory, visual, and kinesthetic. Let's take a closer look at each of these.

Auditory

Learning by listening to verbal instructions; remembering by forming the sounds of words.

If you are a strong auditory learner, this does not necessarily mean you only need to hear something once to remember it. It does mean that in most circumstances you need to hear yourself say it in order to effectively commit it to memory. If your auditory mode is particularly strong, you may find yourself reading aloud instead of silently, talking to yourself, or repeating instructions to make sure you understand them.

If you have a more auditory child, you may find that putting facts or dates into a song, a rap, or a rhythm of some kind helps them memorize. Listening to how a word sounds may be a very important part of learning what the word means.

During my years as a police officer, one of my specialties was finding and arresting drunk drivers. A crucial part of determining whether or not a driver was too intoxicated to be behind the wheel was the "field sobriety test." After I put the suspected drunk driver through a variety of balance tests, I always asked the same question at the end. "Could you please say the alphabet for me?"

You see, unless-you are a rare case or a hardened alcoholic, you usually can't say the alphabet at a normal conversational rate if you're under the influence of alcohol. If drunk driving weren't so serious, it would have been almost amusing to hear the various versions of the standard alphabet these inebriated individuals recited. Interestingly enough, it seems as though no matter how drunk a person is, he can almost always sing the alphabet song. I had more than one person in a business suit standing by the side of the road singing his ABCs just so he could remember how the alphabet started!

It might be wise to insert a word of caution here. Often a strongly auditory parent insists that the not-so-auditory child drills or reviews aloud. If the auditory mode is not particularly strong in the child, he may have to struggle to memorize using this method. In other words, at the end of those precious minutes carved out of a busy evening, you may have a child who knows less than when the review began! The frustrated parent believes that the child is simply not paying attention or not trying hard enough to remember and the child may not even be able to explain why he can't remember.

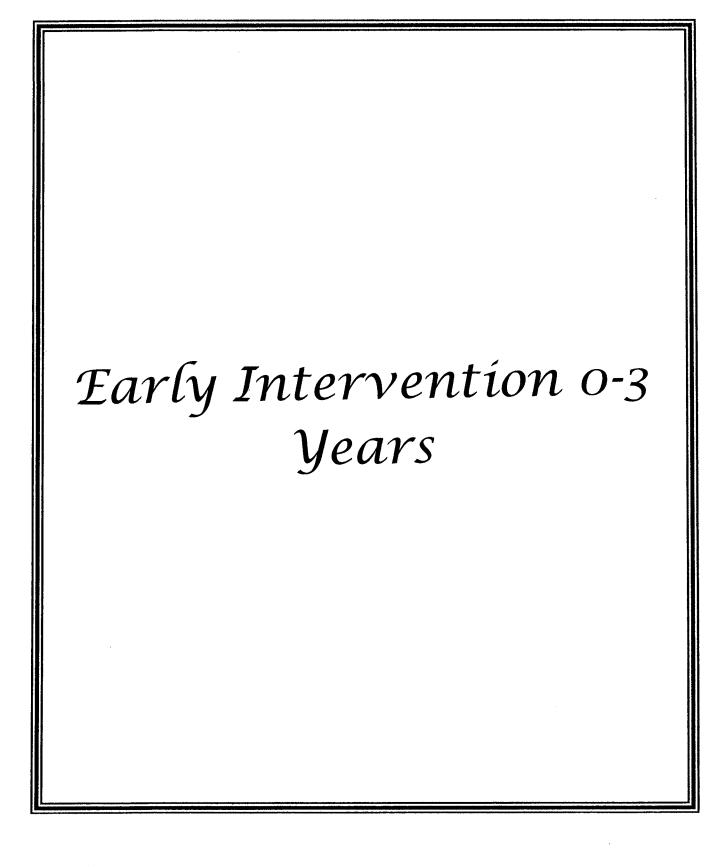
Learning by becoming physically involved and actually doing something with what's being learned.

#### Kinesthetic

If you have a child whose kinesthetic modality is strongest, you may find him in almost constant motion. All his life he has probably been accused of being "fidgety" or a "wiggle worm." The kinesthetic person hears things like "Sit still!" "Put your feet on the floor!" "No more trips to the drinking fountain!" Although most teachers and parents work hard to get children to be still, the strong kinesthetic child needs to put some sort of action to the learning or the learning doesn't stick! Even if the action is as simple as pacing or moving while reading or memorizing, the more kinesthetic learner will remember best what he learned while on the move.

Anne, a very kinesthetic friend of mine (now a physical education teacher!), admitted that her parents were pretty frustrated with her seemingly endless movements. Her mother would insist Anne stay in her bedroom in the basement until all her homework was done. Finally, this resourceful and restless learner devised a way to learn and still keep moving. She used the basement stairs. For spelling or vocabulary, each stair was a letter or word. For history, each was an important fact or date. For geography, each became a different location. Her mother was puzzled as to why Anne was constantly pounding up and down the stairs. All she knew was that Anne's homework was being done and her grades were improving!

Most strongly kinesthetic children are only able to concentrate on one thing for about 10 minutes at a time without taking some sort of break. Since physical activity is so important, if you are the parent of a kinesthetic child, you may want to suggest he put his homework on a clipboard and do it "on the run." Simply set a specific deadline for the homework to be finished, and let your active child burn up energy while learning! When your child must memorize important information, try associating some sort of bodily movement with what needs to be remembered.



## Questions and Answers On Response to Intervention (RTI) and Early Intervening Services (EIS)

January 2007

The final regulations for the reauthorized Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Since publication of the final regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education has received requests for clarification of some of these regulations. This is one in a series of question and answer documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of IDEA and the regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As are not intended to be a replacement for careful study of IDEA and the regulations. The statute, regulations, and other important documents related to IDEA and the regulations are found at http://idea.ed.gov.

The final regulations incorporate new requirements regarding identifying children with specific learning disabilities (SLD) and early intervening services (EIS). With regard to identifying children with SLD, the regulations: (1) allow a local educational agency (LEA) to consider a child's response to scientific, research-based intervention as part of the SLD determination process; (2) allow States to use other alternative research-based procedures for determining whether a child has a SLD; (3) provide that States may not require the use of a severe discrepancy between intellectual ability and achievement to determine whether a child has a SLD; and (4) require a public agency to use the State criteria in determining whether a child has a SLD and discuss the role that response to scientific research-based interventions plays in a comprehensive evaluation process.

The regulations regarding EIS permit an LEA to use not more than 15% of its IDEA Part B funds to develop and implement EIS. The regulations also indicate how EIS funds can be expended; on whom the EIS funds can be spent; the reporting requirements for EIS; special provisions regarding disproportionality based on race and ethnicity and how that affects an LEA's use of EIS funds; and the relationship of EIS to maintenance of effort. The purpose of the questions and answers that follow is to provide additional guidance to States and LEAs in complying with the requirements regarding EIS and response to scientific research-based interventions to identify students with a SLD.

### **Authority:**

The requirements for using a process based on a child's response to scientific, research-based intervention when determining that the child is a child with a specific learning disability are found in the regulations at 34 CFR §§300.307, 300.309 and 300.311.

The requirements for early intervening services are found in the regulations at 34 CFR §§300.205(d), 300.208(a)(2), 300.226 and 300.646(b)(2).

### A. General Education vs. Special Education

Question A-1:

Please clarify how a child with a disability who is already receiving special education and related services also would be eligible to receive services using response to intervention (RTI) strategies.

Answer:

Response to intervention (RTI) strategies are tools that enable educators to target instructional interventions to children's areas of specific need as soon as those needs become apparent. There is nothing in IDEA that prohibits children with disabilities who are receiving special education and related services under IDEA from receiving instruction using RTI strategies unless the use of such strategies is inconsistent with their individualized education programs (IEPs). Additionally, under IDEA, a public agency may use data gathered through RTI strategies in its evaluations and reevaluations of children with SLD. However, children with disabilities who are currently identified as needing special education and related services may not receive RTI services that are funded with IDEA funds used for EIS pursuant to 34 CFR §300.226. This is because EIS is "... for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment."

### **Question A-2:** Why was RTI included in IDEA?

Answer:

The reports of both the House and Senate Committees accompanying the IDEA reauthorization bills reflect the Committees' concerns with models of identification of SLD that use IQ tests, and their recognition that a growing body of scientific research supports methods, such as RTI, that more accurately distinguish between children who truly have SLD from those whose learning difficulties could be resolved with more specific, scientifically based, general education interventions. Similarly, the President's Commission on Excellence in Special Education

recommended that the identification process for SLD incorporate an RTI approach.

### B. Funding

Question B-1: Is the use of funds for EIS required or permitted?

Answer:

Generally, the use of funds an LEA receives under Part B of the Act for EIS is discretionary on the part of the LEA, except when an LEA has significant disproportionality based on race and ethnicity. Under 34 CFR §300.226, an LEA may not use more than 15% of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to 34 CFR §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated EIS. If a State identifies an LEA as having significant disproportionality based on race and ethnicity with respect to the identification of children with disabilities, the placement of children with disabilities in particular educational settings, or the incidence, duration, and type of disciplinary actions taken against children with disabilities, including suspensions and expulsions, the SEA must require the LEA to reserve the maximum amount of funds available to the LEA to provide EIS to children in the LEA, particularly, but not exclusively, to children in those groups that were significantly overidentified.

Question B-2: What does it mean to "reserve" funds for EIS?

Answer:

The Department interprets "reserve" to mean that these funds can only be spent on EIS. The statute does not authorize LEAs to use the funds they must "reserve" for EIS for any other purpose.

Question B-3: Must the maximum amount of special education funds allowed for EIS be reserved only if significant disproportionality is the result of inappropriate identification?

Answer:

No. The reservation of funds must occur whether or not the significant disproportionality was the result of inappropriate identification. In addition to identification, funds also would have to be reserved if significant disproportionality was found with respect to discipline or placement in particular educational settings.

Question B-4: If a State has identified significant disproportionality in an LEA can the IDEA funds the LEA must use to address the issue be used to provide services to students who have already been found eligible for special

education and related services?

Answer:

No. Section 300.226(a) states that EIS is "... for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment."

**Question B-5:** 

What is the relationship between EIS funds and maintenance of effort (MOE) funds?

Answer:

LEAs that seek to reduce their local maintenance of effort in accordance with 34 CFR §300.205(d) and use some of their Part B funds for early intervening services under 34 CFR §300.226 must do so with caution because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds it uses for one purpose affect the amount that it may use for the other. Appendix D of the Part B regulations [71 FR 46817] provides examples of how 34 CFR §300.205(d), regarding local maintenance of effort, and 34 CFR §300.226(a), regarding EIS funds, affect one another.

### C. Evaluation and Eligibility Determinations

**Question C-1:** 

Must an LEA evaluate a child upon the request of the parent at any time during the RTI process? May a parent request an initial special education evaluation at any time during the RTI process?

Answer:

If the LEA agrees with the parent that the child may be a child who is eligible for special education services, the LEA must evaluate the child. The Federal regulations at 34 CFR §300.301(b) allow a parent to request an evaluation at any time. If an LEA declines the parent's request for an evaluation, the LEA must issue a prior written notice as required under 34 CFR §300.503(a)(2) which states, "written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." The parent can challenge this decision by requesting a due process hearing to resolve the dispute regarding the child's need for an evaluation.

**Question C-2:** 

May an LEA require that all children suspected of having a SLD first be assessed using an RTI process before an eligibility determination may be made?

Answer:

If an LEA is using RTI for all its students, it may require the group established under 34 CFR §300.306(a)(1) and 34 CFR §300.308 for the purpose of determining the eligibility (eligibility group) of students suspected of having a SLD to review data from an RTI process in making an eligibility determination. Models based on RTI typically evaluate the child's response to instruction prior to the beginning of the evaluation time period described in 34 CFR §300.301(c)(1), and generally do not require as long a time to complete an evaluation because of the amount of information already collected on the child's achievement, including observation data. If the eligibility group determines that additional data are needed and cannot be obtained within the evaluation time period described in 34 CFR §300.301(c)(1), the parent and eligibility group can agree to an extension of the timeframe. However, as explained in Question C-1, parents can request an evaluation at any time, and the public agency must either obtain consent to evaluate and begin the evaluation, or, if the public agency declines the parent's request, issue a prior written notice as required by 34 CFR §300.503(a)(2).

Question C-3: Section 300.309(a)(2)(i) states that the eligibility group may determine

that a child has a specific learning disability if "the child does not make sufficient progress to meet age or State-approved grade-level standards in one or more" identified areas. Section 300.309(a)(2)(ii) states that the group may determine that a child has a specific learning disability if "the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development" that the group determines is relevant to making an eligibility determination. Please explain how these two criteria differ from one another.

### Answer:

Section 300.309(a)(2)(i) reflects the use of the criterion that the child has not made sufficient progress in at least one of the following areas when using response to intervention as an aspect of the SLD identification process: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, and mathematics problem solving. Alternatively, based on 34 CFR §300.309(a)(2)(ii), the group could consider variation in a child's performance, achievement, or both relative to age, State-approved gradelevel standards, or intellectual development that is determined by the eligibility group to be relevant to identification of a SLD using appropriate assessments. Under this criterion, a pattern of strengths and weaknesses in performance, achievement, or both relative to age, State-approved gradelevel standards or intellectual development would be part of the evidence that a child has a learning disability.

### **Question C-4:**

The regulations require an SEA to adopt criteria for determining if a child has a specific learning disability (34 CFR §300.307(a)). Does this preclude the SEA from mandating RTI as the sole criterion used to determine if a child has a specific learning disability? Must an LEA follow the State-developed criteria for determining if a child has a specific learning disability?

### Answer:

An SEA must include a variety of assessment tools and may not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability, as required under 34 CFR §300.304(b). However, an SEA could require that data from an RTI process be used in the identification of all children with SLD.

An LEA must comply with the criteria adopted by their SEA regarding this requirement. The requirements at 34 CFR §300.307(a) require that a State adopt criteria for determining whether a child has a specific learning disability. The *Analysis of Comments and Changes* accompanying the final Part B regulations, page 46649, clarifies, "... the Department believes that eligibility criteria must be consistent across a State to avoid

confusion among parents and school district personnel. The Department also believes that requiring LEAs to use State criteria for identifying children with disabilities is consistent with the State's responsibility under section 612(a)(3) of the Act to locate, identify, and evaluate all eligible children with disabilities in the State."

### **Question C-5:**

When implementing an evaluation process based on a child's response to scientific, research-based intervention, the regulations require that a "public agency must promptly request parental consent to evaluate a child (34 CFR §300.309(c))" if the "child has not made adequate progress after an appropriate period of time (34 CFR §300.309(c)(1))." Please define "promptly" and "adequate" in this context.

### Answer:

The Federal regulations under 34 CFR §300.309(c) require that if a child has not made adequate progress after an appropriate period of time, a referral for an evaluation must be made. However, the regulations do not specify a timeline for using RTI or define "adequate progress." As required in 34 CFR §300.301(c), an initial evaluation must be conducted within 60 days of receiving consent for an evaluation (or if the State establishes a timeframe within which the evaluation must be completed, within that timeframe). Models based on RTI typically evaluate a child's response to instruction prior to the onset of the 60-day period, and generally do not require as long a time to complete an evaluation because of the amount of data already collected on the child's achievement, including observation data. A State may choose to establish a specific timeline that would require an LEA to seek parental consent for an evaluation if a student has not made progress that the district deemed adequate.

We do not believe it is necessary to define the phrase "promptly" because the meaning will vary depending on the specific circumstances in each case. There may be legitimate reasons for varying timeframes for seeking parental consent to conduct an evaluation. However, the child find requirements in 34 CFR §300.111 and section 612(a)(3)(A) of the Act require that all children with disabilities in the State who are in need of special education and related services be identified, located, and evaluated. Therefore, it generally would not be acceptable for an LEA to wait several months to conduct an evaluation or to seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability. If it is determined through the monitoring efforts of the Department or a State that there is a pattern or practice within a particular State or LEA of not conducting evaluations and making eligibility determinations in a timely manner, this could raise questions as to whether the State or LEA is in compliance with the Act.

**Question C-6:** 

May an eligibility determination be made using only information that was collected through an RTI process?

Answer:

Section 300.304 (b) states that in conducting an evaluation, a public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining eligibility and not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

The Department provided additional clarification regarding this issue in the *Analysis of Comments and Changes* section of the regulations, page 46648. This section states, "an RTI process does not replace the need for a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under 34 CFR §\$300.304 and 300.305. As required in 34 CFR §300.304(b), consistent with section 614(b)(2) of the Act, an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services."

### D. 3-5 Year Olds

**Question D-1:** Why don't early intervening services apply to 3-5 year olds?

Answer: Section 300.226(a) tracks the statutory language in section 613(f)(1) of the

Act, which states that early intervening services are for children in kindergarten through grade 12, with a particular emphasis on children in kindergarten through grade 3. Thus, LEAs may not use Part B funds to

provide EIS to non-disabled preschool children.

### E. Service Delivery Models

**Question E-1:** 

Is the use of RTI required or just permitted?

Answer:

Section 300.307(a)(2)-(3) requires that a State's criteria for identification of specific learning disabilities:

- Must permit the use of a process based on the child's response to scientific, research-based intervention; and
- May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability.

Section 300.307(b) states that a public agency must use the State's criteria in identifying children with specific learning disabilities. Thus, the State's criteria must permit the use of RTI and may require its use, in addition to other assessment tools and strategies, for determining whether the child has a specific learning disability.

**Question E-2:** 

Does each LEA have to select either RTI or a discrepancy model to determine if a child is a child with a specific learning disability?

Answer:

No. The State agency must adopt criteria regarding the determination of SLD eligibility.

An SEA must include a variety of assessment tools and may not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability, as required under 34 CFR §300.304(b). An LEA must comply with the criteria adopted by its SEA. Section 300.307(a) requires a State to adopt criteria for determining whether a child has a specific learning disability.

The Analysis of Comments and Changes section accompanying the Federal regulations, page 46649, clarifies, "... the Department believes that eligibility criteria must be consistent across a State to avoid confusion among parents and school district personnel. The Department also believes that requiring LEAs to use State criteria for identifying children with disabilities is consistent with the State's responsibility under section 612(a)(3) of the Act to locate, identify, and evaluate all eligible children with disabilities in the State. We believe this provides the Department with the authority to require a public agency to use its State's criteria in determining whether a child has an SLD, consistent with §§300.307 through 300.311."

### **Question E-3:**

What services can be defined as early intervening services? For example, are physical therapy, occupational therapy, and assistive technology considered early intervening services?

### Answer:

State and local officials are in the best position to make decisions regarding the provision of early intervening services, including the specific personnel to provide the services and the instructional materials and approaches to be used. Nothing in the Act or regulations prevents States and LEAs from including related services personnel in the development and delivery of educational and behavioral evaluations, services, and supports for teachers and other school staff to enable them to deliver coordinated, early intervening services.

### F. General

**Question F-1:** 

Please define "significant disproportionality" in the context of EIS.

Answer:

Each State has the discretion to define the term "significant disproportionality," in the context of EIS, for the LEAs and for the State in general. In identifying significant disproportionality, a State may determine how much disproportionality is significant. However, the State's definition of "significant" must be based only on a numerical analysis, and may not consider factors such as the extent to which an LEA's policies and procedures comply with the IDEA or the compliance history of an LEA. Establishing a national standard for significant disproportionality is not appropriate because there are multiple factors at the State level to consider in making such determinations. For example, States need to consider the population size, the size of individual LEAs, and composition of the State's population. States are in the best position to evaluate those factors. The Department has provided guidance to States on methods for assessing disproportionality. This guidance is found at: http://www.ideadata.org/docs/Disproportionality%20Technical%20Assista nce%20Guide.pdf.

**Question F-2:** 

Will early intervening services data be reported in State Performance Plans (SPP) or Annual Performance Reports (APRs)?

Answer:

No. Section 300.226 directs LEAs to report EIS data to their SEA. It is not a part of the information that an SEA must report to the Department in its SPP or APRs.

Question F-3:

For discipline purposes, would a student's participation in an RTI process be considered a "basis of knowledge" under 34 CFR §300.534(b)?

Answer:

Generally, no. Participation in an RTI process, in and of itself, would not appear to meet the "basis of knowledge" standards in 34 CFR §300.534. The standards for whether a public agency has a "basis of knowledge" are laid out in the Federal regulations at 34 CFR §300.534.

**Question F-4:** 

When an RTI model is implemented, can an incremental process be used to train individual schools so that over time the entire LEA is implementing the model or must all the schools in the entire LEA be trained simultaneously?

### Answer:

If the State or LEA requires the use of a process based on the child's response to scientific, research-based intervention, in identifying children with SLD, then all children suspected of having a SLD, in all schools in the LEA, would be required to be involved in the process. However, research indicates that implementation of any process, across any system, is most effective when accomplished systematically in an incremental manner over time. If the LEA chose to "scale up" the implementation of the RTI model gradually over time, as would be reasonable, the LEA could not use RTI for purposes of identifying children with SLD until RTI was fully implemented in the LEA. Therefore, it is unwise for a State to require the use of a process based on the child's response to scientific, research-based intervention before it has successfully scaled up implementation.

### **Question F-5:**

How might EIS funds be used to support a process determining whether a child has a specific learning disability and to address the needs of students who need additional academic and behavioral support to succeed in a general education environment?

### Answer:

If EIS funds are used to support a process to determine whether a child has specific learning disability there are three identification/instructional dynamics that need to be considered: identification of learning disabilities; (2) early intervening services; and (3) response to intervention (RTI). While the Department does not subscribe to a particular RTI model, the core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction.

For example, an RTI model with a three-tier continuum of school-wide support might include the following tiers and levels of support: (1) Tier one (Primary Intervention), for all students using high quality scientific research-based instruction in their general education setting. It would not be appropriate to use EIS funds for these activities since these students do not need additional academic and behavioral support to succeed in a general education environment. (2) Tier two (Secondary Intervention), for specialized small group instruction of students determined to be at risk for academic and behavioral problems. It would be appropriate to use EIS funds to support these activities. (3) Tier three (Tertiary Intervention) for specialized individualized instructional/behavioral support for students with intensive needs. EIS funds could not be used if these students were currently receiving special education or related services.

**Question F-6:** 

Should services supported with EIS funds be scientifically based?

Answer:

The No Child Left Behind Act and IDEA call on educational practitioners to use scientifically based research to guide their decisions about which interventions to implement. IDEA states that in implementing coordinated early intervening services an LEA may carry out activities that include--(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and (2) Educational and behavioral evaluations, services, and supports,

including scientifically based literacy instruction.

California Department of Developmental Services, Title 17
California Code of Regulations
Title 17, Division 2
Chapter 2 - Early Intervention Services
SubChapter 5 - Procedural Safeguards
Article 3 - Complaint Process

### § 52170. Complaint Procedures.

- (a) A complaint shall be a written and signed statement alleging that a regional center, LEA or any private service provider receiving funds under Part C of the Individuals with Disabilities Education Act, Title 20 United States Code, Sections 1431-1445, has violated any federal or state law or regulation governing the provision of any early intervention services including determination of eligibility provided through Part C of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1431-1445, for infants or toddlers and their families.
- (b) Any individual or organization may file a complaint.
- (c) The alleged violation must have occurred:
  - (1) Not more than one year before the date that the complaint received by the Department of Developmental Services unless a longer period is reasonable because the alleged violation continues for that child or other children; or
  - (2) Not more than three years before the date on which the complaint is received by the Department of Developmental Services, if the complainant is requesting reimbursement or corrective action as remediation of the complaint.
- (d) The procedures under Chapter 1, commencing with Section 4500 of Division 4.5 of the Welfare and Institutions Code or Part 30, commencing with Section 56500 of the Education Code, or Title 5 California Code of Regulations Section 4600 et seq., shall not be used for resolving complaints regarding California's Early Start Program.
- (e) Each regional center and LEA shall inform the parent and other interested individuals or organizations of the right to file a complaint directly with the Department of Developmental Services at the following address:

DEPARTMENT OF DEVELOPMENTAL SERVICES
OFFICE OF HUMAN RIGHTS
ATTENTION: EARLY START COMPLAINT UNIT
1600 NINTH STREET, ROOM 240, M.S. 2-15 SACRAMENTO, CA 95814

California Department of Developmental Services, Title 17
California Code of Regulations
Title 17, Division 2
Chapter 2 - Early Intervention Services
SubChapter 5 - Procedural Safeguards
Article 4 - Mediation and Due Process Procedures

### § 52172. Procedures That Apply to Both Mediation and Due Process.

- (a) A parent may request a mediation conference and/or a due process hearing under any of the following circumstances:
  - (1) A regional center or LEA proposes to initiate or change the identification, evaluation, assessment, placement or provision of appropriate early intervention services;
  - (2) A regional center or LEA refuses to initiate or change the identification, evaluation, assessment, placement or provision of appropriate early intervention services; or,
- (b) A parent may also request a mediation conference at any time to resolve disagreements involving any matter related to IDEA, Part C.
- (c) A regional center or LEA may request a mediation conference and/or a due process hearing when the parent refuses to consent to all or any part of an evaluation and assessment of the infant or toddler.
- (d) All requests for a mediation conference and/or due process hearing shall be in writing and filed with the contractor that the Department of Developmental Services uses for mediation and due process hearings. If a parent is unable to make a request for mediation or a due process hearing in writing, the service coordinator shall assist the parent in filing the request.
- (e) The duration for <u>both</u> either a mediation conference <u>or</u> or a due process hearing shall not exceed a total of thirty days for each process from the receipt of the mediation or due process request to the mailing of the mediation agreement or hearing decision. If a mediation conference is requested at or during the time of a due process hearing, the mediation conference resolution will occur prior to the due process hearing.
- (f) The location of the mediation and/or due process hearing shall be at a time and place reasonably convenient to the parent.
- (g) During the pendency of mediation and/or due process hearing procedures,

the infant or toddler shall continue to receive the early intervention services listed on the IFSP they are currently receiving. If mediation and/or due process hearing involves the initiation of a service(s) the infant or toddler shall receive those services that are not in dispute.

(h) Mediation conferences and due process hearings shall be conducted in English and interpreted in the language of the family's choice or other mode of communication.

- (f) If the complainant is unable to provide the complaint in writing, the service coordinator shall directly assist the complainant or provide assistance to identify resources which can aid the complainant in completing the written complaint. The complaint shall include the following:
  - (1) The name, address and phone number of the complainant;
  - (2) A statement that a regional center, LEA or any private service provider receiving funds under Part C of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1431-1445, has violated <u>any</u> federal or state law or regulation governing the provision of early intervention services <u>including determination of eligibility</u> for infants or toddlers and their families in California;
  - (3) A statement of facts upon which the alleged violation is based;
  - (4) The party allegedly responsible;
  - (5) A description of the voluntary steps taken at the local level to resolve the complaint, if any.
- (g) <u>Mediation is available at any time to resolve disagreements involving any matter related to IDEA Part C.</u>

California Department of Developmental Services, Title 17
California Code of Regulations
Title 17, Division 2
Chapter 2 - Early Intervention Services
SubChapter 5 - Procedural Safeguards
Article 4 – Mediation and Due Process Procedures

### § 52173. Mediation Procedures

- (a) Mediation shall be voluntary
- (b) The matter being mediated shall proceed to a scheduled due process hearing if either party waives medication or if mediation fails in whole or in part. The mediator may assist the parties in specifying aany unresolved issue(s) to be included in the hearing request.
- (b) Mediation is available at any time to resolve disagreements involving any matter related to IDEA Part C .
- (c) The mediation conference shall be conducted by a mediator who is an impartial, third party with no personal or professional interest that would conflict with his or her objectivity in mediating a disagreement.
- (d) The due process hearing officer shall be a different person than the mediator when mediation does not resolve the disagreement.
- (e) The mediator shall be trained in communication, mediation and problem solving and shall be knowledgeable about early intervention programs and the federal and state laws and regulations applicable to Part C of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1431-1445, and the California Early Intervention Services Act, Government Code Sections 95000-95030.
- (f) The mediator shall be under contract with the Department of Developmental Services.
- (g) A person who otherwise qualifies under Subsection (c) and (d) of this Section as a mediator is not an employee of the Department of Developmental Services solely because the person is paid by the Department of Developmental Services to conduct the mediation process.
- (h) A parent may be accompanied by any representative at the mediation.
- (i) The mediator shall ensure that written agreements from the mediation conference are signed and provided to all participants at the conclusion of the mediation conference.
- (j) Discussions during mediation must be confidential and may not be used as evidence in any subsequent due process or civil proceedings.

### California Early Start Program Eligibility Criteria

### **Current Policy**

### General.

An infant or toddler shall be eligible for early intervention services if he or she is between birth up to thirty-six months of age and meets one of the criteria specified in Section 52022 as determined by means of evaluation pursuant to Section 52082 of these regulations and needs early intervention services.

### Eligibility Criteria.

### (a) Developmental Delay

A developmental delay exists if there is a significant difference pursuant to 52082 between the infant's or toddler's current level of functioning and the expected level of development for his or her age in one or more of the following developmental areas:

- (1) Cognitive;
- (2) Physical: including fine and gross motor, vision, and hearing;
- (3) Communication;
- (4) Social or emotional:
- (5) Adaptive.

### (b) Established Risk

- (1) An established risk condition exists when an infant or toddler has a condition of known etiology which has a high probability of resulting in developmental delay; or
- (2) An established risk condition exists when an infant or toddler has a solely low incidence disability.

### (c) High Risk for Developmental Disability

- (1) High risk for a developmental disability exists when a multidisciplinary team determines that an infant or toddler has a combination of two or more of the following factors that requires early intervention services based on evaluation and assessment pursuant to section 52082 and section 52084:
  - (A) Prematurity of less than 32 weeks gestation and/or low birth weight of less than 1500 grams.
  - (B) Assisted ventilation for 48 hours or longer during the first 28 days of life.
  - (C) Small for gestational age: below the third percentile on the National Center for Health Statistics growth charts.
  - (D) Asphyxia neonatorum associated with a five minute Apgar score of 0 to 5.

- (E) Severe and persistent metabolic abnormality, including but not limited to hypoglycemia, acidemia, and hyperbilirubinemia in excess of the usual exchange transfusion level.
- (F) Neonatal seizures or nonfebrile seizures during the first three years of life.
- (G) Central nervous system lesion or abnormality.
- (H) Central nervous system infection.
- (I) Biomedical insult including, but not limited to, injury, accident or illness which may seriously or permanently affect developmental outcome.
- (J) Multiple congenital anomalies or genetic disorders which may affect developmental outcome.
- (K) Prenatal exposure to known teratogens.
- (L) Prenatal substance exposure, positive infant neonatal toxicology screen or symptomatic neonatal toxicity or withdrawal.
- (M) Clinically significant failure to thrive, including, but not limited to, weight persistently below the third percentile for age on standard growth charts or less than 85% of the ideal weight for age and/or acute weight loss or failure to gain weight with the loss of two or more major percentiles on the growth curve.
- (N) Persistent hypotonia or hypertonia, beyond that otherwise associated with a known diagnostic condition.
- (2) High risk for a developmental disability also exists when a multidisciplinary team determines that the parent of the infant or toddler is a person with a developmental disability and the infant or toddler requires early intervention services based on evaluation and assessment as specified in section 52082 and section 52084.
- (d) A developmental delay shall not be determined based on:
  - (1) Temporary physical disability;
  - (2) Cultural or economic factors;
  - (3) The normal process of second language acquisition; or
  - (4) Manifestation of dialect and sociolinguistic variance.

### New Policy

An infant or toddler shall be eligible for early intervention services if he or she meets one of the criteria specified below.

### (a) Developmental Delay

The developmental delay criteria below pertains to initial eligibility determination only and is not to be applied to continuing eligibility of infants and toddlers. If the infant or toddler is determined eligible under either (1) or (2) below, eligibility will continue until 36 months of age or final transition from the Early Start Program.

(1) Between birth and 24 months of age

The infant or toddler has a developmental delay defined as 33 percent or greater between the infant or toddler's current level of functioning and the expected level of development for his or her age in one or more of the following five developmental areas:

- (A) Cognitive;
- (B) Physical: including fine and gross motor, vision, and hearing;
- (C) Communication;
- (D) Social/emotional;
- (E) Adaptive/self help.
- (2) Age 24 months or older
  - (A) The infant or toddler has a developmental delay defined as 50 percent or greater between the infant's or toddler's current level of functioning and the expected level of development for his or her age in one of the five developmental areas above; or
  - (B) The infant or toddler has a developmental delay defined as 33 percent or greater between the infant or toddler's current level of functioning and the expected level of development for his or her age in two or more of the five developmental areas above.

### (b) Established Risk

- (1) An established risk condition exists when an infant or toddler has a condition of known etiology which has a high probability of resulting in developmental delay; or (2) An established risk condition exists when an infant or toddler has a solely low incidence disability.
- (c) A developmental delay shall not be determined based on:
  - (1) Temporary physical disability:
  - (2) Cultural or economic factors:
  - (3) The normal process of second language acquisition; or
  - (4) Manifestation of dialect and sociolinguistic variance.
- (d) In order to ensure that all infants and toddlers are appropriately identified and provided timely early intervention services when eligible, regional centers shall establish, either with internal resources or through contract, an At Risk Follow-Along Program. The purpose of this program is to provide monitoring and follow-along

services to infants and toddlers at-risk of developmental disability who may eventually need and be eligible for early intervention services. These services shall include but not be limited to Case management, Parent training and guidance, Developmental monitoring, Follow along support, and Resource and referral to appropriate generic resources.



### Parents' Rights: An Early Start Guide for Families 🝹



### Confidentiality & Access to Records

E arly Start records are an important source of information about your child. The information you provide to the regional center or local education agency (LEA) about your child and your family is confidential. Such information will only be shared with authorized persons involved in your child's services.

### As a parent,\* you have the right to

1. access records, including the right to have you or your representative examine and obtain copies of records relating to your child; You may request that any regional center or LEA amend or remove information relating to your child from the records. [CFR 303.402, CCR 52164, CCR 52168]

- 2. receive, within five days of your request, copies of records relating to your child and/or explanations that you request; [CCR 52164]
- request a meeting with the director of the regional center or the superintendent of the LEA about information contained in the record; and [CCR 52168]
- 4. have personally identifiable information about your child maintained in a confidential manner and have its sources, access, uses, and policies for location, storage, disclosure, retention, and destruction explained to you per the Family Education Rights and Privacy Act. [CFR 303.401, CFR 303.460, CCR 52160, CCR 52162, CCR 52165, CCR 52169]
  - \* Refer to CCR 52000(b)(36) for definition of parent.

### Evaluation & Assessment

he determination of eligibility for Early Start in California includes a timely,  $oldsymbol{1}$  comprehensive, multidisciplinary evaluation and assessment of every child under age three years who is suspected to be in need of early intervention services. If no parent or guardian is available or the child is a ward of the court, a knowledgeable surrogate parent who has no conflicting interest will be appointed. Procedural safeguards ensure that families are provided their rights under the law. [CFR 303.322, CFR 303.406, CCR 52082]

### As a parent, you have the right to

- be fully informed of your rights under Early Start; [CFR 303.403, GC 95020(c), CCR 52160, CCR 52161]
- 2. refer your child for evaluation and assessment, provide information throughout the process, make decisions, and give informed consent for your child's early intervention services; [CFR 303.401, CFR 303.404, CCR 52040(d)]
- 3. understand and provide voluntary written permission or refusal before the initial evaluation and assessments are administered; [CFR 303.405, CCR 52162]
- participate in the initial evaluation and assessment process including eligibility determination; [CFR 303.322, GC 95020, CCR 52082, CCR 52084]
- receive a completed initial evaluation and assessment within 45 days after the referral of your child to a regional center or an LEA; [CFR 303.321, CFR 303.322, CCR 52086]
- participate in a meeting to share the results of evaluations and assessments; and
- 7. participate in all decisions regarding eligibility and services. [CFR 303.343, GC 95014(a), GC 95020(b), CCR 52082(a), CCR 52104]

### The Individuals with Disabilities Education Act (IDEA) requires

- 1. Evaluation and assessment materials are administered in the language of the parents' choice or other mode of communication, unless it is clearly not feasible to do so. [CFR 303,323, CCR 52084]
- Evaluation and assessment procedures and materials are selected and administered so as not to be racially or culturally discriminatory. [CFR 303.323, CCR 52082]
- Evaluation and assessment materials are appropriate to assess the specific areas of developmental need and are used for the specific purposes for which they were designed. [CFR
- 4. Evaluations and assessments are conducted by qualified personnel. [CFR 303.322, CCR 52082, CCR 52084]
- Evaluations and assessments administered to children with known vision, hearing, orthopedic, or communication impairments are selected to accurately reflect the child's developmental level. [CFR 303.322, CCR 52082]
- Evaluations and assessments are administered in the five developmental areas, which include physical development (motor abilities, vision, hearing, and health status); communication development; cognitive development; adaptive development; and social or emotional development. Assessments and evaluations are ongoing while your child is in Early Start. [CFR 303.322, CCR 52082, CCR 52084, CCR 52102]
- Evaluations and assessments shall be conducted in natural environments whenever possible. [CCR 52082(i), CCR 52084(e)]
- Pertinent records relating to your child's health status and medical history are reviewed. [CFR 303.322, CCR 52082]
- No single procedure is used as the sole criterion for determining your child's eligibility for early intervention services. [CFR 303.323, CCR 52082]
- 10. Interviews to identify family resources, priorities, and concerns regarding the development of your child and your family's needs are voluntary. [CFR 303.322, CCR 52084, CCR 52106]

### Individualized Family Service Plan

n individualized family service plan (IFSP) is a written plan for providing early  $\Lambda$  intervention services to an eligible child and the child's family. For an infant or toddler who has been evaluated for the first time, a meeting must take place within 45 days of the referral to the regional center or LEA to share the results of the evaluation, to determine eligibility, and, for children who are eligible, to develop the initial IFSP. Evaluation results and determination of eligibility may be shared with families prior to the first IFSP meeting. [CFR 303.340, CFR 303.342, GC 95020(b), CCR 52100, CCR 52102]

A periodic review of your child's IFSP must take place at least every six months. A review may occur more frequently if there are any changes to the IFSP or if you request a periodic review with the regional center or LEA. The IFSP must also be reviewed annually to evaluate how your child is doing and to make any needed changes to the IFSP. [CFR 303.342, CCR 52102]

### During the development and implementation of an IFSP, you have the right as the parent

- 1. attend the IFSP meetings and participate in developing the IFSP; [CFR 303.343, CCR 52104]
- 2. invite other family members to attend IFSP meetings; [CFR 303.343, CCR 52104]
- 3. invite an advocate or persons other than family members to attend and participate in the IFSP meetings; [CFR 303.343, CCR 52104]
- 4. have a copy of the complete IFSP; [CFR 303.402, CCR 52102]
- 5. have the contents of the IFSP fully explained in the language of your choice; [CFR 303.342, CFR 303.403, CCR 52102]

- 6. give consent to services listed on the IFSP. If you do not give consent to a service, it will not be provided. You may withdraw consent after initially accepting or receiving a service; [CFR 303.342, CFR 303.404, CFR 303.405, CCR 52102]
- have services provided in the natural environment or an explanation of why that is not possible; [CFR 303.12, CFR 303.344, CCR 52106]
- exchange information about your child among other agencies; [CFR 303.460, CCR 52112, CCR
- be notified in writing before any agency or service provider proposes or refuses to initiate or change your child's identification, evaluation, assessment, placement, or the provision of appropriate early intervention services to your child or your family. [CFR 303.403, CCR 52161]

The notice must contain:

- the action that is proposed or refused,
- reasons for the action, and
- all available procedural safeguards.

The notice must be presented in the language of your choice, unless it is clearly not feasible to do so, and may be translated so that you understand its contents.

[CFR 303.400 to 303.460, CCR 52161]

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### Mediation Conferences, Due Process Hearings, and State Complaints

In Early Start, parents have rights and protections to assure that early intervention services are provided to their children in a manner appropriate to their needs, in consideration of family concerns, and in compliance with applicable federal and State statutes and regulations. The following procedures are only for children under the age of three years. [CFR 303.422, CCR 52170, CCR 52173, CCR 52174]

### As a parent, you have the right to

- request a mediation conference and/or a due process hearing any time a regional center
  or LEA proposes or refuses to initiate or change the identification, evaluation, assessment,
  placement, and/or provision of appropriate early intervention service(s); [CFR 303.419, CFR
  303.420. CCR 52172]
- be informed of your right to file a complaint or a request for mediation or due process; [CFR 303.510, CCR 52170]
- file a complaint if you believe there has been a violation of any federal or state statute or regulation governing early intervention services under Early Start including eligibility and services; and [CFR 303.511, CCR 52170]
- 4. request a mediation conference immediately, prior to a complaint or due process hearing request, or at any time during the complaint/due process hearing processes to resolve a dispute related to any matter concerning federal or state statute or regulation governing early intervention services under Early Start [CCR 52170(b)]; and
- 5. file a complaint if a due process decision fails to be implemented. [CCR 52170(b)]

### MEDIATION CONFERENCES

Mediation is a flexible, non-binding, confidential process in which a neutral mediator facilitates settlement negotiations between you and another party. Voluntary impartial mediation conferences are a more informal way to resolve disagreements with early intervention service agencies or to address alleged violations of any state and federal statutes or regulations. Mediation is voluntary [CFR 303.419, CCR 52173].

### As a parent you have the right to

- file a request for mediation as the initial option for resolving a dispute or any time during the due process hearing or complaint process [CFR 303.419, CCR 52173];
- request a due process hearing or file a state complaint if the disagreement is not resolved [CCR 52173];
- 3. refuse to participate in mediation [CFR 303.419, CCR 52173];
- 4. have an impartial person facilitate the mediation conference [CFR 303.419, CCR 52173(c)];
- require that the mediation conference is carried out at a time and in a location that is reasonably convenient for you [CFR 303.419, CCR 52173];
- have all personally identifiable information maintained in a confidential manner [CFR 303.419(b), CCR 52173(g)]; and
- receive a written document outlining the agreements reached as a result of the mediation conference [CFR 303.419, CCR 52173(i)].

Requests for mediation are filed with the:

Office of Administrative Hearings Attention: Early Start Intervention Section 2349 Gateway Oaks Drive, Suite 2000, Sacramento, CA 95833 (916) 263-0654 Fax: (916) 376-6318 [CCR 52173]

### DUE PROCESS HEARINGS

All parents are encouraged to resolve differences at the lowest administrative level possible. When differences between you and a regional center or LEA cannot be resolved, due process hearings are available. You, as a parent, are encouraged to seek assistance from your child's service coordinator, the regional center, or the Special Education Local Plan Area (SELPA) office. [CFR 303.420, CCR 52172]

Circumstances leading to a due process hearing may be disagreements related to a proposal or refusal for identification, evaluation, assessment, placement, or services. [CCR 52172(a)]

Your child will continue to receive the early intervention services identified on the IFSP that he/she is currently receiving unless you and the regional center or LEA otherwise agree to a change. If your disagreement involves a new service that has not started, your child will receive all services identified on the IFSP that are not in dispute. This does not include your regional center providing early intervention services after your child has reached 36 months of age, as federal law and regulations do not allow states to pay for early intervention services under any circumstances once your child transitions from Early Start. The program or programs your child enrolls in subsequent to transition from Early Start is responsible for providing you and your child services for which he or she is eligible to receive. [CCR 52172(g)]

Requests for a due process hearing are filed with the Office of Administrative Hearings at the following address:\* [CFR 303.420, CCR 52172]

Office of Administrative Hearings Attention: Early Start Intervention Section 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833 (916) 263-0654 Fax: (916) 376-6318 [CCR 52172]

\*The due process hearing request form may be obtained from your service coordinator, the regional center, the LEA, and DDS website: www.dds.ca.gov/Forms/pdf/DS1802.pdf

The due process hearing must be completed within 30 days of receipt of the request by the Office of Administrative Hearings. The timely issuance of the written decision may not be delayed by any concurrent voluntary local efforts to resolve the matter. The decision will be final unless appealed. [CFR 303.425, CCR 52172(e)]

### STATE COMPLAINTS

Any individual or organization may file a signed, written complaint against the Department of Developmental Services (DDS), the California Department of Education (CDE), or any regional center, LEA, or private service provider that receives Part C funds alleging violations of State or federal early intervention statute or regulation. The complaint process can also address remedies for denial of eligibility or appropriate services. However, even though DDS is mandated to investigate any complaint it receives, state law does not allow disclosure of the Early Start recipient's personally identifiable information without written parental consent, other than authorized employees specified by the regional center or LEA [CFR 303.510, CCR 52170(a)].

Information or assistance in filing complaints is available from your child's service coordinator, the regional center office, or the special education local plan area (SELPA). DDS and CDE are available for consultation regarding the filing of a complaint. Additional assistance is available from advocacy organizations such as the State Council on Developmental Disabilities or Disabilities Rights California. As efforts to resolve the matter at the local level are undertaken, a complaint may be filed concurrently with a request for a mediation conference or due process hearing. [CFR 303.423, CCR 52170]

Complaints are filed directly with the

Department of Developmental Services
Office of Human Rights and Advocacy Services
Attention: Early Start Complaint Unit
1600 9th Street, Room 240, MS 2-15
Sacramento, CA 95814
(916) 654-1888 Fax (916) 651-8210
[CCR 52170(e)]

### Any individual or organization who files a complaint has the right to [CCR 52170]

- receive assistance in filing the complaint from the service coordinator, regional center, or LEA; [CCR 52170]
- not be compelled to use any other procedures under the Education Code or the Lanterman Developmental Disabilities Services Act to resolve the complaint; [GC 95007, CCR 52170]
- submit additional information to DDS that may be helpful to the investigation; ICCR 521701
- receive a final written decision within 60 days of the date DDS receives the complaint; [CCR 52170]
- receive appropriate remedies that may include monetary reimbursement or other corrective action, and assurance that services will be provided appropriately in the future if the decision of DDS includes remedies for denial of appropriate services; [CCR 52170]
- have any issue in a complaint that is not part of a due process hearing be resolved by DDS within 60 days of the receipt of the complaint; [CFR 303.512(c), CCR 52171(c)]
- be notified by DDS that the hearing decision is binding if an issue is being raised in a complaint that had previously been decided in a due process hearing involving the same parties; and ICCR 521701
- have any complaint resolved that alleges the failure of a public agency or private service provider to implement a due process decision. [CCR 52170]

### The complaint must

- be in writing and contain a signed statement alleging that DDS, CDE, the regional center, LEA, or other service provider involved with Early Start has violated a federal or State law or regulation; [CCR 52170(a)]
- 2. provide the name, address, and phone number of the complainant; [CCR 52170(f)]
- 3. contain a statement of facts upon which the violation is based; [CCR 52170(f)]
- include the name of the party responsible against whom the complaint is being filed; [CCR 52170(f)]
- 5. have occured not more than one year before the date the complaint is received by DDS unless a longer period is reasonable because the alleged violation continues for the child or other children, or [CCR 52170(c)]
- have occured not more than three years before the date on which the complaint is received by DDS if the complainant is requesting reimbursement or corrective action as remediation of the complaint [CCR 52170(c)]; and
- 7. the complaint may also include, if applicable, a description of the voluntary steps taken at the local level to resolve the complaint. [CCR 52170]
- be withdrawn if the complainant elects to participate in mediation within the 60-day complaint investigation.

### California Early Start Program Eligibility

### **Current Policy**

An infant or toddler shall be eligible for early intervention services if he or she is between birth up to thirty-six months of age and meets one of the criteria specified below.

### (a) Developmental Delay

A developmental delay exists if there is a significant difference pursuant to California Code of Regulations (CCR), Title 17, §52082 between the infant's or toddler's current level of functioning and the expected level of development for his or her age in one or more of the following developmental areas:

- (1) Cognitive;
- (2) Physical: including fine and gross motor, vision, and hearing;
- (3) Communication:
- (4) Social or emotional;
- (5) Adaptive.

### (b) Established Risk

- (1) An established risk condition exists when an infant or toddler has a condition of known etiology which has a high probability of resulting in developmental delay; or (2) An established risk condition exists when an infant or toddler has a solely low incidence disability.
- (c) High Risk for Developmental Disability
  - (1) High risk for a developmental disability exists when a multidisciplinary team determines that an infant or toddler has a combination of two or more of the following factors that requires early intervention services based on evaluation and assessment pursuant to CCR, Title 17, §52082 and §52084:
    - (A) Prematurity of less than 32 weeks gestation and/or low birth weight of less than 1500 grams.
    - (B) Assisted ventilation for 48 hours or longer during the first 28 days of life.
    - (C) Small for gestational age: below the third percentile on the National Center for Health Statistics growth charts.
    - (D) Asphyxia neonatorum associated with a five minute Apgar score of 0 to 5.
    - (E) Severe and persistent metabolic abnormality, including but not limited to hypoglycemia, acidemia, and hyperbilirubinemia in excess of the usual exchange transfusion level.
    - (F) Neonatal seizures or nonfebrile seizures during the first three years of life.
    - (G) Central nervous system lesion or abnormality.
    - (H) Central nervous system infection.

- (I) Biomedical insult including, but not limited to, injury, accident or illness which may seriously or permanently affect developmental outcome.
- (J) Multiple congenital anomalies or genetic disorders which may affect developmental outcome.
- (K) Prenatal exposure to known teratogens.
- (L) Prenatal substance exposure, positive infant neonatal toxicology screen or symptomatic neonatal toxicity or withdrawal.
- (M) Clinically significant failure to thrive, including, but not limited to, weight persistently below the third percentile for age on standard growth charts or less than 85% of the ideal weight for age and/or acute weight loss or failure to gain weight with the loss of two or more major percentiles on the growth curve.
- (N) Persistent hypotonia or hypertonia, beyond that otherwise associated with a known diagnostic condition.
- (2) High risk for a developmental disability also exists when a multidisciplinary team determines that the parent of the infant or toddler is a person with a developmental disability and the infant or toddler requires early intervention services based on evaluation and assessment as specified in CCR, Title 17 §52082 and §52084.
- (d) A developmental delay shall not be determined based on:
  - (1) Temporary physical disability;
  - (2) Cultural or economic factors;
  - (3) The normal process of second language acquisition; or
  - (4) Manifestation of dialect and sociolinguistic variance.

### **New Policy**

An infant or toddler shall be eligible for early intervention services if he or she meets one of the criteria specified below.

### (a) Developmental Delay

The developmental delay criteria below pertains to initial eligibility determination only and is not to be applied to continuing eligibility of infants and toddlers. If the infant or toddler is determined eligible under either (1) or (2) below, eligibility will continue until 36 months of age or final transition from the Early Start Program.

(1) Between birth and 24 months of age

The infant or toddler has a developmental delay defined as 33 percent or greater between the infant or toddler's current level of functioning and the expected level of development for his or her age in one or more of the following five developmental areas:

- (A) Cognitive;
- (B) Physical: including fine and gross motor, vision, and hearing;
- (C) Communication;
- (D) Social/emotional;
- (E) Adaptive/self help.
- (2) Age 24 months or older. If pursuant to the defined intake evaluation and assessment procedures in Title 17, Section 52082,
  - (A) The infant or toddler has a developmental delay defined as 50 percent or greater between the infant's or toddler's current level of functioning and the expected level of development for his or her age in one of the five developmental areas above; or
  - (B) The infant or toddler has a developmental delay defined as 33 percent or greater between the infant or toddler's current level of functioning and the expected level of development for his or her age in two or more of the five developmental areas above.
- (b) Established Risk (Birth to 36 months of age)
  - (1) The infant or toddler has:
    - (A) An established risk condition of known etiology which has a high probability of resulting in developmental delay; or
    - (B) An established risk condition which is a solely low incidence disability.
- (c) High Risk for Developmental Disability (Birth to 24 months)

The high risk for developmental disability criteria below pertains to initial eligibility determination only and is not to be applied to continuing eligibility of infants and toddlers. If pursuant to the defined intake evaluation and assessment procedures in Title 17, Section 52082, the infant or toddler is determined eligible under either (1) or (2) below, eligibility will continue until 36 months of age or final transition from the Early Start Program.

- (1) High risk for a developmental disability exists when a multidisciplinary team determines that an infant or toddler has a combination of two or more of the following factors that requires early intervention services:
  - (A) Prematurity of less than 32 weeks gestation and/or low birth weight of less than 1500 grams.
  - (B) Assisted ventilation for 48 hours or longer during the first 28 days of life.
  - (C) Small for gestational age: below the third percentile on the National Center for Health Statistics growth charts.
  - (D) Asphyxia neonatorum associated with a five minute Apgar score of 0 to 5.
  - (E) Severe and persistent metabolic abnormality, including but not limited to hypoglycemia, acidemia, and hyperbilirubinemia in excess of the usual exchange transfusion level.
  - (F) Neonatal seizures or nonfebrile seizures during the first three years of life.
  - (G) Central nervous system lesion or abnormality.
  - (H) Central nervous system infection.
  - (I) Biomedical insult including, but not limited to, injury, accident or illness which may seriously or permanently affect developmental outcome.
  - (J) Multiple congenital anomalies or genetic disorders which may affect developmental outcome.
  - (K) Prenatal exposure to known teratogens.
  - (L) Prenatal substance exposure, positive infant neonatal toxicology screen or symptomatic neonatal toxicity or withdrawal.
  - (M) Clinically significant failure to thrive, including, but not limited to, weight persistently below the third percentile for age on standard growth charts or less than 85% of the ideal weight for age and/or acute weight loss or failure to gain weight with the loss of two or more major percentiles on the growth curve.
  - (N) Persistent hypotonia or hypertonia, beyond that otherwise associated with a known diagnostic condition.
- (2) High risk for a developmental disability also exists when a multidisciplinary team determines that the parent of the infant or toddler is a person with a developmental disability and the infant or toddler requires early intervention services.
- (d) A developmental delay shall not be determined based on:
  - (1) Temporary physical disability;
  - (2) Cultural or economic factors;
  - (3) The normal process of second language acquisition; or
  - (4) Manifestation of dialect and sociolinguistic variance.

### California Early Start Program Non-Required Services

### **Current Policy**

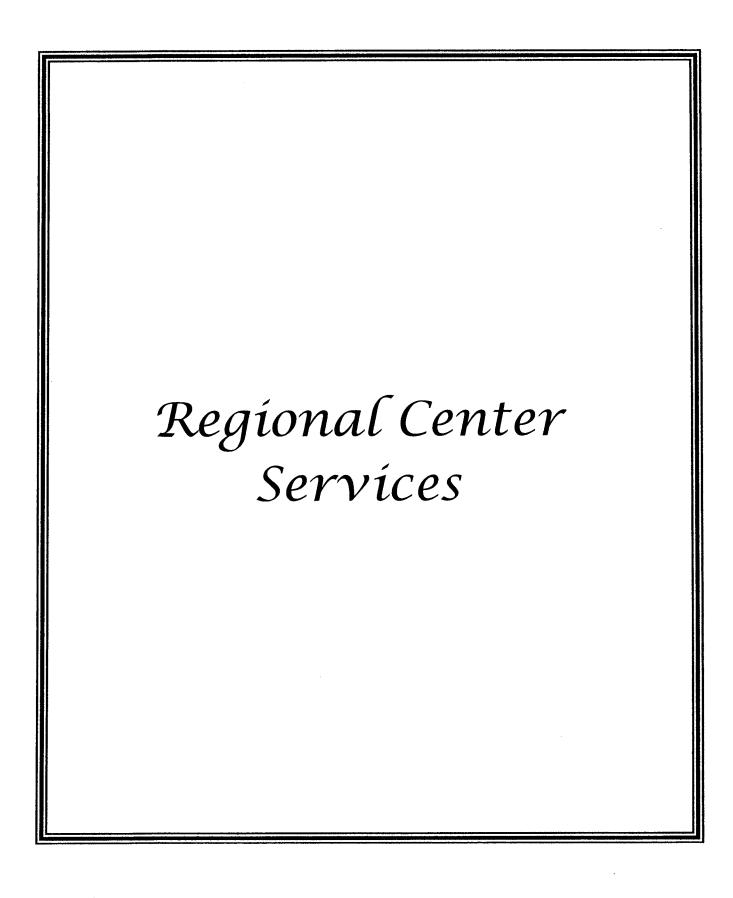
Designation of Services on the IFSP.

- (a) Each service on the IFSP shall be designated as one of the following:
  - (1) A required early intervention service. These services shall be provided, purchased or arranged by a regional center or LEA; or
  - (2) Other public programs providing services that may benefit the infant, toddler and/or family which the eligible infant or toddler or his or her family may be eligible to receive, subject to the statutory, regulatory and other program criteria of those programs or agencies. These services may include but not be limited to: residential care; family reunification services, Head Start, Supplemental Security Income; Supplemental Security Programs; Temporary Assistance to Needy Families and food stamps; Medi-Cal; or
  - (3) A referral to a community service that may be provided to an eligible infant or toddler or his or her family but is not required under the California Early Intervention Services Act, Government Code Sections 95000-95030.
    - (A) A non required service includes but is not limited to: employment; child care; housing; medical services such as surgery, or medication, hospitalization, medical devices necessary to control or treat a medical condition, or immunizations, well-baby care, income support, family or marital counseling unrelated to the infant or toddler's development, and substance abuse counseling.
    - (B) The IFSP shall, to the extent appropriate, include the steps and time lines for the service coordinator to assist the parent to secure those services through public or private sources.
- (b) The receipt of required early intervention services listed on the IFSP, pursuant to Section 52108 (a)(1) of these regulations, from other state or federal agencies such as California Children Services, is dependent on the infant or toddler and the infant's or toddler's parent meeting the statutory, regulatory, and other program criteria of the agency and/or program that provides those services. These criteria may include financial eligibility and medical condition eligibility as diagnosed by program certified personnel, and on the availability of funding for the program.
  - (1) In the event that the infant or toddler or infant's or toddler's parent is not eligible to receive those agency services, or funding for the program is unavailable, the required early intervention services shall be provided by the regional center or the LEA.
  - (2) The parent shall be informed in writing of this provision during the initial 45 day evaluation and assessment period and/or during the IFSP meeting.

### **New Policy**

Designation of Services on the IFSP.

- (a) Each service on the IFSP shall be designated as one of the following:
  - (1) A required early intervention service. These services shall be provided, purchased or arranged by a regional center or LEA; or
  - (2) Other public programs providing services that may benefit the infant, toddler and/or family which the eligible infant or toddler or his or her family may be eligible to receive, subject to the statutory, regulatory and other program criteria of those programs or agencies. These services may include but not be limited to: residential care; family reunification services, Head Start, Supplemental Security Income; Supplemental Security Programs; Temporary Assistance to Needy Families and food stamps; Medi-Cal; or
- (b) The receipt of required early intervention services listed on the IFSP, pursuant to Section 52108 (a)(1) of these regulations, from other state or federal agencies such as California Children Services, is dependent on the infant or toddler and the infant's or toddler's parent meeting the statutory, regulatory, and other program criteria of the agency and/or program that provides those services. These criteria may include financial eligibility and medical condition eligibility as diagnosed by program certified personnel, and on the availability of funding for the program.
  - (1) In the event that the infant or toddler or infant's or toddler's parent is not eligible to receive those agency services, or funding for the program is unavailable, the required early intervention services shall be provided by the regional center or the LEA.
  - (2) The parent shall be informed in writing of this provision during the initial 45 day evaluation and assessment period and/or during the IFSP meeting.



## Where is Alta located?

offices. Persons seeking assistance/information Alta California Regional Center has nine should call the nearest office.

## AUBURN

MISSION STATEMENT:

(530) 885-8447 {voice} (530) 885-9148 {fax} Auburn, CA 95603 560 Wall Street, SuiteB

### SACRAMENTO 2241 Harvard Street

Sacramento CA 95815 (916) 978-6400 {voice} (916) 489-4241 (TDD} (916) 489-1033 {fax}

[Sacramento County]

[Placer County]

Alta California Regional Center creates and maintains partnerships to support all persons with developmental disabilities, children at risk, and their families in choosing services and supports

V ission

SOUTHLAKETAHOE Starlake Building Grass Valley, CA 95945

900 E. Main Street GRASSVALLEY

Suite 102

2489 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150 (530) 542-0442 {voice} (530) 542-3436 {fax} Suite 1 [Nevada and Sierra Counties]

(530)272-4231 {voice} (530)272-4637 {fax}

through individual lifelong planning to achieve

satisfying lifestyles in their own communities.

## Eastern El Dorado Counties] WOODLAND 344 Placerville Drive,

Alpine, Placer, Nevada, and

PLACERVILLE

250 West Main Street, #100 Woodland, CA 95695 (530) 666-3391 {voice} (530) 666-3831 {fax} Polo County:

West El Dorado County]

(530) 626-1353 {voice}

(530) 626-0162 {fax}

A future where all individuals are valued

members of their communities.

Placerville, CA 95667

Suite 1

## YUBACITY

1620 Santa Clara Drive

ROSEVILLE

506 Starr Drive, Suite A (530) 674-3070 {voice} Yuba City, CA 95993 (530) 674-7228 (fax) (Sutter, Yuba, and

(916) 786-8110 {voice}

Roseville, CA 95661

Suite 100

(916) 786-0621 {fax}

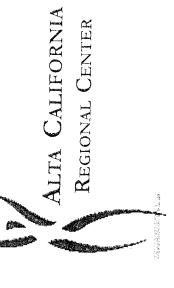
[Placer County:]

### TRUCKEE

Colusa Counties]

Summit Bldg., Suite 212 Sierra, Nevada, Placer (530) 550-2220 {voice} (530) 550-2217 {fax } 10775 Pioneer Trail Truckee, CA 96161

www.altaregional.org ACRC website:



A Program for Individuals with Developmental Disabilities and Their Families

### Regiona Californ Center

www.altaregional.org

APR 2005

Counties]

# What is Alta California Regional Center?

Alta California Regional Center (Alta) is the one agency in the community through which people with mental retardation or other developmental disabilities and their families are helped to make use of essential public and private services to meet their unique needs.

Alta is one of a network of 21 regional centers in California established by the Lantennan Mental Retardation Services Act of 1969. Alta is a private non-profit corporation working under contract with the California Department of Developmental Services.

## Who is eligible to receive Alta's services?

Any resident of Alpine, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, or Yuba Counties with a known or suspected developmental disability is eligible to receive services from Alta.

According to the Lanterman Developmental Disabilities Act (AB846), "developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or other handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation. Such a disability must originate before an individual attains age 18, continue or be expected to continue indefinitely, and constitute a substantial handicap for such individuals.

Alta does not discriminate or deny services or other benefits based on income, race, color, sex, religion, creed, national origin, or political status.

## What supports does Alta provide?

Community education about developmental disabilities

Community resource development

Consultation to public and private agencies serving individuals with developmental disabilities

Continuous 24-hour out-of-home care, planning, placement, and follow-up

Counseling support/referral

Diagnosis and evaluation

Early intervention services for infants with developmental disabilities and their families

Expert testimony for regional center consumers appearing before the courts

Genetic counseling referral

Individual Program Planning (IPP)

Information and referral

Prenatal diagnosis

Purchasing necessary services

Service Coordination (case management)

# What services does Alta purchase?

A variety of services may be purchased depending on the needs of the consumer and available funding from the state and federal governments. In addition, Alta has a legal duty to identify and pursue available alternative funding sources (generic resources) prior to making a purchase. Services purchased by Alta must relate to the consumer's developmental disability and assessment of need. Some of the most commonly purchased services are:

- 多 24-hour out-of-home care
  - 举 Adult day program
- 举 Independent living services
  - ※ Respite care
- 衆 Transportation

## What do Alta's services cost?

There is no charge for services rendered during diagnosis and assessment for eligibility. The State of California currently requires parents of children under age 18 who are in continuous 24-hour out-of-home placement to reimburse the state for a portion of the placement cost, according to their ability to pay. For parents with children age 3 to 17, living in the home and receiving respite, day care or camping services, there may be a share of cost based on the Family cost Participation Plan (FCPP). This law, passed January 1, 2005 sessed based on FCPP criteria, family size, establishes FCPP and families will be asnumber of consumers in the family and in-

### **ACRC** – Informal Meeting Guidelines

<u>Purpose</u>: The Informal Meeting is a voluntary process, as provided by the Lanterman Act, whose purpose is to attempt to resolve the issue or issues that are the subject of the fair hearing appeal informally prior to the scheduled fair hearing. The individual designated by ACRC's Executive Director to conduct this meeting will render a written decision after the meeting. This decision is not binding on you—you do not have to accept it. You always have the right to proceed to a formal fair hearing in front of an administrative law judge.

### Possible Outcomes of Informal Meeting:

- 1. Upheld. The Hearing Officer may uphold the decision of the Regional Center to deny, terminate, reduce or otherwise modify a service or support. If you are not happy with this decision, you may proceed to the already-scheduled Mediation set for: October 24, 2011. If you are satisfied with the decision, you may withdraw your appeal at that time or at any time prior to the State-Level Fair Hearing.
- 2. **Reversed/Modified.** The Hearing Officer may determine based upon information presented at the meeting that the Regional Center's decision should be reversed, and that the disputed service or support should be funded, reinstated, or should remain in place or unmodified pursuant to your request.
- 3. Additional Information Needed. The hearing officer may decide to "hold the record open;" that is, to postpone making the decision until he/she receives additional information. (This may involve you and your Service Coordinator exploring other avenues for funding or provision of the disputed service or support, as required by law.) In these cases, it will sometimes be helpful for us to a second time to discuss any new information obtained before the informal meeting decision is issued.

### Decision:

The Designee's written decision will be mailed within five (5) business days of the Informal Meeting.

### **Ground Rules:**

- --Show respect: refrain from interrupting, raising your voice, or making commands or demands
- --Remember that we are here to resolve a dispute, not to blame or accuse
- --Let the Designee know if you need to take a short break or if you would prefer to end the meeting.
- --The Designee may end the meeting at any time due to inappropriate behavior by any individual.

### Notes:

# DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, Room 320, MS 3-9 SACRAMENTO, CA 95814 TDD 654-2054 (For the Hearing Impaired) (916) 654-1958



August 4, 2011

TO:

REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS

SUBJECT:

JUNE 2011 TRAILER BILL LANGUAGE AFFECTING REGIONAL

**CENTERS** 

The purpose of this correspondence is to transmit a summary of the recently enacted Trailer Bill (AB 104, Chapter 37, Statutes of 2011) that directly affects regional centers or the developmental services system. This trailer bill language (TBL) became effective July 1, 2011. Regional centers should continue to educate their communities regarding these legislative changes. While this correspondence provides a high level summary of the TBL, a complete and thorough review of TBL (see <a href="www.leginfo.ca.gov">www.leginfo.ca.gov</a>) is imperative for regional centers' statutory compliance. Clarifying information regarding implementation of TBL is included in several areas below.

#### **Health Benefit Cards**

TBL Sections 1, 8 and 9: Section 95020 of the Government Code (Gov. Code) and sections 4643 and 4646.4 of Welfare & Institutions Code¹ were amended, requiring that at the time of intake and assessment for Early Start or Lanterman Act services, and at the time of subsequent development, scheduled reviews, or modification of a consumer's Individualized Family Service Plan (IFSP) or Individual Program Plan (IPP), the consumer, or where appropriate, parents, legal guardian, or conservator must provide copies of any health benefit cards under which the consumer is eligible to receive health benefits, including, but not limited to, private health insurance, a health care service plan, Medi-Cal, Medicare, and TRICARE. If the individual, or, where appropriate, the parents, legal guardians, or conservators, have no such benefits, the regional center may not use that fact to negatively impact the services that the individual may or may not receive from the regional center.

# Vendor Electronic Billing (e-billing)

TBL Sections 2 and 7: Section 95020.5 was added to the Gov. Code and section 4641.5 was added, requiring that effective July 1, 2011, regional centers begin transitioning providers and vendors of services purchased through a regional center to electronic billing. "Electronic billing" is defined as the Regional Center e-Billing System web application provided by the Department of Developmental Services (Department).

<sup>&</sup>lt;sup>1</sup> All citations are to the Welfare and Institutions Code unless otherwise stated.

<sup>&</sup>quot;Building Partnerships, Supporting Choices"

Regional Center Directors and Board Presidents August 4, 2011 Page two

All providers, vendors and contracted providers of services provided or purchased through a regional center must submit all billings electronically for services provided on or after July 1, 2012, with the exception of the following:

- A provider or vendor whose services are paid for by vouchers, as that term is defined in section 4512 (j).
- A provider or vendor who demonstrates that submitting billings electronically for services presents a substantial financial hardship for the provider.

<u>Implementation</u>: Regional centers are encouraged to develop and share with their community a timeline for, and immediately begin, transitioning vendors to e-billing over the course of the fiscal year.

Transfer Reduced Scope Prevention Program to the Family Resource Centers TBL Sections 5 and 6: Section 4435 was amended stating that babies identified as being at-risk who were in the prevention program as of June 30, 2011, are to continue in the prevention program until the child reaches 36 months of age, the regional center has determined the child is eligible for Early Start services, the regional center has determined the child is eligible for Lanterman Act services, or June 30, 2012, whichever date is earlier. Effective July 1, 2011, a regional center may not refer any at-risk babies to the prevention program described in section 4435.

Section 4435.1 was added, stating that effective July 1, 2011, the Department shall establish a program for at-risk babies. "At risk babies" means children under 36 months of age who are not eligible for the Early Start or Lanterman Act programs, and whose genetic, medical, developmental, or environmental history is predictive of a substantially greater risk for developmental disability than that for the general population, the presence of which is diagnosed by qualified clinicians. Effective July 1, 2011, when a regional center intake and assessment determination is that a baby is an at-risk baby, the regional center will, with parental consent, refer the baby and family to the family resource center described below, for outreach, information, and referral services.

Effective July 1, 2011, the Department is required to contract with an organization representing one or more family resource centers which receive federal funds to provide outreach, information, and referral services to generic agencies for children under 36 months of age who are not eligible for the Early Start or Lanterman Act programs. The organization with which the Department contracts is to be an organization that supports families of young children with intellectual or developmental disabilities, and those at risk of intellectual or developmental disabilities by ensuring the continuance, expansion, promotion, and quality of local family support services, including coordination, outreach, and referral. The contract must ensure the expeditious delivery of outreach, information, and referral services to at-risk babies, and require the organization to

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establish a process with the applicable regional center or centers for referral of the atrisk baby to the regional center when the family resource center suspects that the child may be eligible for Early Start or Lanterman Act services.

Implementation: The Department has contracted with the Family Resource Center Network of California and Support for Families of Children with Disabilities (contractors) to carry out the requirements of section 4435.1. The program is known as the Prevention Resource and Referral Services. The contractors will deliver services through subcontracts with the local Family Resource Centers (FRC). Local FRCs are required to negotiate a Memorandum of Understanding (MOU) with their regional center by September 1, 2011. The MOU will specify the procedures by which the local FRCs shall accept referrals from the regional center and refer children to the regional center who may be exhibiting developmental concerns that necessitate evaluation by the regional center for Early Start or Lanterman Act services. Other MOU components shall include activities to ensure coordination between the FRCs and the regional centers. Regional centers will receive current year's prevention program funds based on their percent to total share of the June, 2011 Prevention Program (Status Code P) caseload. The Department previously notified regional centers not to allocate two percent of their current year Prevention Program funds to the FRCs.

# <u>Enhancing Community Integration and Participation—Development of Transportation Access Plans</u>

TBL Section 10: Section 4646.5 was amended to require that the planning process for the IPP also include the development of a transportation access plan for a consumer when all of the following conditions are met:

- The regional center is purchasing private, specialized transportation services or services from a residential, day, or other provider, excluding vouchered service providers, to transport the consumer to and from day or work services;
- The planning team has determined that a consumer's community integration and participation could be safe and enhanced through the use of public transportation services; and,
- The planning team has determined that generic transportation services are available and accessible.

To maximize independence and community integration and participation, the transportation access plan must identify the services and supports necessary to assist the consumer in accessing public transportation and comply with section 4648.35. These services and supports may include, but are not limited to, mobility training services and the use of transportation aides. Regional centers are encouraged to coordinate with local public transportation agencies.

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Implementation: Where applicable, at the time of development, review, or modification of the IPP, regional centers must develop the required transportation access plan. The Department will review the regional centers' implementation of this provision through the Department's IPP monitoring protocol, as part of the Home and Community Based Services Waiver monitoring or other Department monitoring activities.

## Maximize Utilization of Generic Resources—Education Services

TBL Section 13: Section 4648.55 was added, prohibiting a regional center from purchasing day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18 to 22 years of age, if the consumer is eligible for special education and related education services and has not received a diploma or certificate of completion, unless the planning team determines that the consumer's needs cannot be met in the educational system or grants an exemption pursuant to section 4648(d). The exemption language in section 4648(d) states: "An exemption to the provisions of this section may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a). An exemption shall be granted through the IPP process and shall be based on a determination that the generic service is not appropriate to meet the consumer's need. The consumer shall be informed of the exemption and the process for obtaining an exemption."

If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center is to assist the consumer in accessing those services. To ensure that consumers receive appropriate educational services and an effective transition from services provided by educational agencies to services provided by regional centers, the regional center service coordinator, at the request of the consumer or, where appropriate, the consumer's parent, legal guardian, or conservator, may attend the individualized education program planning team meeting.

For consumers who are 18 to 22 years of age, who have left the public school system, and who are receiving regional center purchased services identified above on or before July 1, 2011, a determination is to be made through the IPP as to whether the return to the educational system can be achieved while meeting the consumer's needs. If the planning team determines that the consumer's needs cannot be met in the educational system, the regional center may continue to purchase the services identified above. If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center must assist the consumer in accessing those services.

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For consumers who are 18 to 22 years of age, who have left school prior to July 1, 2011, but who are not receiving any of the regional center purchased services identified above the regional center is to use generic education services to meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs if those needs are subsequently identified in the IPP unless the consumer is eligible for an exemption, based on the criteria below. If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center is to assist the consumer in accessing those services.

Implementation: The statutory provisions apply to all consumers 18-22 years of age, who are eligible for special education and related education services and have not received a diploma or certificate of completion, even if the regional center is currently purchasing day program, vocational education, work services, independent living program, or mobility training and related transportation services. For consumers 18 to 22 years of age, at the time of development, review, or modification of the IPP, each planning team must determine if generic educational services continue to or can meet a consumer's needs, or if extraordinary circumstances exist, and decide whether or not an exemption on that basis may be granted. Also, when the planning team determines, through the IPP process, that the generic (education) services are not appropriate to meet the consumer's needs, an exemption should be granted.

The Department will review the regional centers' implementation of this provision through the Department's IPP monitoring protocol, as part of the Home and Community Based Services Waiver monitoring or other Department monitoring activities.

# Maintaining the Consumer's Home of Choice—Mixed Payment Rates in Residential Facilities with Alternative Residential Model Rates

<u>TBL Section 14</u>: Section 4681.7 was added, stating that effective July 1, 2011, in order to maintain a consumer's preferred living arrangement and adjust the residential services and supports in accordance with changing service needs identified in the IPP, a regional center may enter into a signed written agreement with a residential service provider for a consumer's supervision, training, and support needs to be provided at a lower level of payment than the facility's designated Alternative Residential Model (ARM) service level. The regional center signed written agreement with the provider must ensure all of the following:

- Services provided to other facility residents comply with the applicable service requirements for the facility's approved service level pursuant to section 4681.1 and Title 17 of the California Code of Regulations:
- Protection of the health and safety of each facility resident;

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- Identification of the revised services and supports to be provided to the consumer within the ARM rate structure as part of the establishment or revision of an IPP; and,
- Identification of the rate.

If the service needs of a consumer referred to above change such that the consumer requires a higher level of supervision, training, and support, the regional center must adjust the consumer's service level and rate to meet the consumer's changing needs.

A regional center is authorized to enter into a signed written agreement with a residential service provider for a consumer's needed services at a lower level of payment and staffing without adjusting the facility's approved service level. A signed written agreement for a lower level of payment and staffing may only be entered into when a regional center, a consumer, and the facility agree that the facility can safely provide the service and supports needed by the consumer, as identified in the IPP, at the lower level of payment with the payment options within the ARM rate structure and with associated ARM service level requirements.

<u>Implementation</u>: Compliance with this section of TBL will be monitored through the Department's fiscal audits of regional centers and vendors, as appropriate.

# Maximizing Resources for Behavioral Services

TBL Section 15: Section 4686.3 was added, requiring the Department to adopt emergency regulations to address the use of paraprofessionals in group practice provider behavioral intervention services and establish a rate. The regulations must establish a rate and the educational or experiential qualifications and professional supervision requirements necessary for the paraprofessional to provide behavioral intervention services.

<u>Implementation</u>: Department staff is currently working on the needed regulations to implement the statutory provisions.

<u>TBL Section 16</u>: Section 4686.31 was added requiring any vendor who provides services as specified below to submit verification to the regional center for services provided to consumers who are under 18 years of age and residing in the family home. The Department must develop and post a standard form for vendors to complete and provide to the family for signature. The form must include, but not be limited to, the name and title of the vendor, the vendor identification number, the name of the consumer, the unique client identifier, the location of the service, the date and start and end times of the service, and a description of the service provided. The form must also

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include instructions for the parents or legally appointed guardians to contact the regional center service coordinator immediately if they are unable to sign the form.

The vendor must provide the parents or legally appointed guardians of a minor consumer with the Department form to sign. The form must be signed and dated by the parents or legally appointed guardians of a minor consumer and be submitted to the vendor providing services within 30 days of the month in which the services were provided. The vendor must submit the completed forms to the regional center together with the vendor's invoices for the services provided. If the parents or legally appointed guardians of a minor consumer do not submit a form to the vendor, the vendor must notify the regional center.

This requirement only applies to the following types of services: Behavior Analyst, Associate Behavior Analyst, Behavior Management Assistant, Behavior Technician (Paraprofessional), Behavior Management Consultant, Counseling Services, Tutor, Crisis Team-Evaluation and Behavioral Intervention, Tutor Services-Group, Client/Parent Support Behavior Intervention Training, and Parent-Coordinated Home Based Behavior Intervention Program for Autistic Children.

The failure of the parents or legally appointed guardians of a minor consumer to submit a verification of services to the vendor shall not be a basis for terminating or changing behavioral services to the minor consumer. Any changes to behavioral services shall be made by the consumer's planning team pursuant to section 4512.

Implementation: The Department notified regional centers of these new requirements in an email dated July 11, 2011. The required form is available on the Department's homepage at: <a href="http://www.dds.ca.gov/Forms/docs/DS5862.pdf">http://www.dds.ca.gov/Forms/docs/DS5862.pdf</a> in English, Spanish, Tagalog, Russian, Chinese, and Vietnamese. In a case where the vendor notifies the regional center the parent(s) or legally appointed guardian will not sign the form, the regional center should follow-up with the parent/legally appointed guardian to determine if services were delivered prior to making payment.

Also, as noted previously, release of the emergency regulations implementing the new classification of behavior technician (paraprofessional) is pending.

#### Individual Choice Day Services

<u>TBL Sections 17 and 18</u>: Sections 4688.1 and 4688.2 were amended prohibiting regional centers, effective July 1, 2011, from referring any additional consumers to alternative senior programs and alternative customized programs respectively.

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<u>Implementation</u>: While new service referrals are prohibited, consumers receiving services from these two program types, prior to July 1, may continue to do so.

<u>TBL Section 19</u>: Section 4688.21 was added, indicating that the Legislature places a high priority on opportunities for adults with developmental disabilities to choose and customize day services to meet their individualized needs; have opportunities to further the development or maintenance of employment and volunteer activities; direct their services; pursue postsecondary education; and increase their ability to lead integrated and inclusive lives. To further these goals, a consumer may choose a tailored day service or vouchered community-based training service, in lieu of any other regional center vendored day program, look-alike day program, supported employment program, or work activity program.

# **Tailored Day Service**

A tailored day service must do both of the following:

- Include an individualized service design, as determined through the IPP and approved by the regional center, that maximizes the consumer's individualized choices and needs. This service design may include, but may not be limited to, fewer days or hours than in the program's approved day program, look-alike day program, supported employment program, or work activity program design; and flexibility in the duration and intensity of services to meet the consumer's individualized needs; and,
- Encourage opportunities to further the development or maintenance of employment, volunteer activities, or pursuit of postsecondary education; maximize consumer direction of the service; and increase the consumer's ability to lead an integrated and inclusive life.

The type and amount of tailored day service must be determined through the IPP process, and the IPP must contain, but not be limited to:

- A detailed description of the consumer's individualized choices and needs and how these choices and needs will be met; and,
- The type and amount of services and staffing needed to meet the consumer's individualized choices and needs, and unique health and safety and other needs.

The staffing requirements set forth in section 55756 of Title 17 of the California Code of Regulations and section 4851 (r) do not apply to a tailored day service. For currently vendored programs wishing to offer a tailored day service option, the regional center shall vendor a tailored day service option upon negotiating a rate and maximum units of service design that includes, but is not limited to:

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- A daily or hourly rate and maximum units of service design that does not exceed the equivalent cost of four days per week of the vendor's current rate, if the vendor has a daily day program rate; and,
- A rate and maximum units of service design that does not exceed the equivalent cost of four-fifths of the hours of the vendor's current rate, if the vendor has an hourly rate.

The regional center must ensure that the vendor is capable of complying with, and will comply with, the consumer's IPP, individual choice, and health and safety needs.

For new programs wishing to offer a tailored day service option, the regional center shall vendor a tailored day service option upon negotiating a rate and maximum units of service design. The rate paid to the new vendor shall not exceed four-fifths of the temporary payment rate or the median rate, whichever is applicable.

Effective July 1, 2011, and prior to the time of development, review, or modification of a consumer's IPP, regional centers must provide information about tailored day service to eligible adult consumers. A consumer may request information about tailored day services from the regional center at any time and may request an IPP meeting to secure those services.

Implementation: Entities/persons not currently vendored as day program, look-alike day program, supported employment program or a work activity program seeking vendorization to provide tailored day services, must be vendored under an existing, appropriate service code for day program, look-alike day program, supported employment program or a work activity program. When purchasing tailored day services from a day program, look-alike day program, supported employment program, or work activity program, the regional center shall sub code the expenditure accordingly:

- TDS Tailored Day Service "Big Claim" Program Code 00
- TDSC Tailored Day Service CPP Program Code 01 (This sub code should be used by the regional center during the fiscal year in which a consumer moves from a developmental center to the community.)

# **Voucher – Community-based Training Service**

A vouchered community-based training service is defined as a consumer-directed service that assists the consumer in the development of skills required for community integrated employment or participation in volunteer activities, or both, and the assistance necessary for the consumer to secure employment or volunteer positions or pursue secondary education. Implementation of vouchered community-based training service is contingent upon the approval of the federal Centers for Medicare and Medicaid Services (CMS). Vouchered community-based training service must be

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provided in natural environments in the community, separate from the consumer's residence. A consumer, parent, or conservator vendored as a vouchered community-based training service must utilize the services of a financial management services (FMS) entity, and the regional center must provide information about available FMS and assist the consumer in selecting a FMS vendor to act as co-employer. A parent or conservator is prohibited from being the direct support worker employed by the vouchered community-based training service vendor.

If the direct support worker is required to transport the consumer, the vouchered community-based training service vendor must verify that the direct support worker can transport the consumer safely and has a valid California driver's license and proof of insurance. The rate for vouchered community-based training service shall not exceed thirteen dollars and forty-seven cents (\$13.47) per hour. The rate includes employer-related taxes and all transportation needed to implement the service, except a consumer vendored as a vouchered community-based training service may also be eligible for a regional center-funded bus pass, if appropriate and needed. The rate does not include the cost of the FMS.

Vouchered community-based training services are limited to a maximum of 150 hours per quarter. The services to be provided and the service hours must be documented in the consumer's IPP. A direct support worker of vouchered community-based training service must be an adult who possesses the skill, training, and experience necessary to provide services in accordance with the IPP. Effective July 1, 2011, and prior to the time of development, review, or modification of a consumer's IPP, regional centers must provide information about vouchered community-based training service to eligible adult consumers. A consumer may request information about vouchered community-based training services from the regional center at any time and may request an IPP meeting to secure those services. The type and amount of vouchered community-based training service must be determined through the IPP process. And the IPP must contain, but not be limited to:

- A detailed description of the consumer's individualized choices and needs and how these choices and needs will be met; and,
- The type and amount of services and staffing needed to meet the consumer's individualized choices and unique health and safety and other needs.

Implementation: This vouchered option is in lieu of any other regional center vendored day program, look-alike day program, supported employment program, or work activity program. As specified in statute the implementation of vouchered community-based training service is contingent upon the approval of CMS. As such, the Department's submitted Home and Community-Based Services Waiver renewal application includes this service option with a requested effective date of October 1, 2011. Additionally, as

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the statute requires use of a FMS, implementing regulations defining and establishing the use of and rates for such services will be released shortly. When implemented upon receipt of CMS approval, the vouchered community-based day training service will also be available to consumers who are not Waiver beneficiaries.

TBL Section 21: Section 4690.6 was added, requiring activity centers, adult development centers, behavior management programs, and other look-alike day programs with a daily rate to bill regional centers for services provided to consumers in terms of half days of service and full days of service. "Full day of service" means a day in which the consumer's attendance is at least 65 percent of the declared and approved program day. "Half day of service" means any day in which the consumer's attendance does not meet the criteria for billing for a full day of service. A regional center may change the length of the declared and approved program day for a specific consumer to meet the needs of that consumer, upon the recommendation of the planning team. The regional center must set forth in the IPP the length of the consumer's program day and the reasons for the change in the length of the declared and approved program day. The definitions above do not apply to vendors of tailored day program service.

Implementation: Regional centers should ensure providers are aware of this provision and maintain appropriate documentation regarding individual consumer attendance. Such documentation should be reviewed during regional center and Department vendor audits. The Department will not be establishing half-day rates; the statute does not change the rate. The statute requires the vendor to bill for one-half of their current rate when a consumer attends the program for 65% or less of the program day.

## Supported Living Services: Maximizing Resources

TBL Section 20: Section 4689 was amended stating that for consumers receiving supported living services (SLS) who share a household with one or more adults receiving SLS, efficiencies in the provision of service may be achieved if some tasks can be shared, meaning the tasks can be provided at the same time while still ensuring that each person's individual needs are met. These tasks may only be shared to the extent they are permitted under the Labor Code and related regulations, including, but not limited to, Industrial Welfare Commission Minimum Wage Order No. 15. The planning team, at the time of development, review, or modification of a consumer's IPP, for housemates currently in a supported living arrangement or planning to move together into a supported living arrangement, or for consumers who live with a housemate not receiving SLS who is responsible for the task, shall consider, with input from the service provider, whether any tasks, such as meal preparation and cleanup, menu planning, laundry, shopping, general household tasks, or errands can appropriately be shared. If tasks can be appropriately shared, the regional center shall purchase the prorated share of the activity. Upon a determination of a reduction in

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services the regional center must inform the consumer of the reason for the determination, and provide a written notice of fair hearing rights pursuant to section 4701.

To ensure that consumers in supported living arrangements receive the appropriate amount and type of supports, an independent assessment is required for consumers currently receiving, or initially entering, supported living who have SLS costs, or have an initial recommendation for service costs, that exceed 125 percent of the annual statewide average cost of SLS, as published by the Department commencing June 30, 2011. Commencing July 1, 2011, regional centers must identify consumers currently receiving SLS, whose annual SLS costs exceed 125 percent of the annual statewide average cost of SLS. The regional center must also identify consumers who have an initial recommendation for SLS costs that exceed 125 percent of the annual statewide average cost of SLS. For these consumers the regional center must arrange for an independent assessment to be completed prior to the next scheduled IPP for consumers currently in a supported living arrangement and within 30 days of identification of consumers with an initial recommendation for services. The independent assessment must be completed by an impartial entity or individual other than the SLS agency providing, or planning to provide, the service and shall be used during IPP meetings to assist the team to determine whether the services provided or recommended are necessary and sufficient and that the most cost-effective methods of service are utilized. Decisions about supported living shall be made by the IPP team.

The independent assessment process must adhere to all of the following:

 SLS providers must conduct comprehensive assessments for the purpose of getting to know the consumer they will be supporting and developing a support plan congruent with the choices and needs of the individual and consistent with the principles of supported living set forth in the Lanterman Act and Title 17. The independent assessment is not intended to take the place of or repeat the service provider's comprehensive assessment. The purpose of the independent assessment is to provide an additional look at whether the SLS being provided. or being proposed for a person initially entering supported living, are necessary, sufficient, or cost-effective to meet the person's choices and needs, as determined by the comprehensive assessment and the planning team. The independent needs assessment may include, but is not limited to, use of natural and generic support, technology that provides support otherwise necessary through direct staffing hours, shared housing, support alternatives, learning methods, lifting and transferring, bathroom, grooming, meals, communication. transportation, mobility, emergency procedures, medication management, household responsibilities, personal needs, interpersonal relationships, and behavioral, medical, and overnight supports.

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- A consumer shall not be excluded from SLS based on an independent assessment.
- The entity or individual conducting independent assessments shall not be an employee of a regional center or the consumer's service provider. Current supported living providers may conduct independent assessments for consumers being supported, or about to be supported, by other providers. However, a provider who conducts an independent assessment may not provide direct services to a consumer it has assessed for a period of one year. Each regional center must publicly identify the entities and individuals it will use to conduct independent assessments. Regional centers must ensure there are sufficient independent assessors so that assessments can be provided when required without undue delay.
- Initial entry into supported living may not be delayed for more than 30 days following the determination to request an independent assessment due to the need for an independent assessment. If the independent assessment cannot be conducted within that time period, the individual may move into supported living with the amount of supports recommended by the service provider's comprehensive assessment and an additional IPP to consider the results of the independent assessment must be conducted when that assessment becomes available, if necessary. For individuals currently in a supported living arrangement, supports must continue at the same level while the independent assessment is being conducted.
- Independent assessors shall meet all of the following qualifications:
  - Have a demonstrated understanding of the foundation of supported living as a service that assists an individual to live in his or her own home with supports as needed to be part of their community and of the principles and operational requirements of supported living set forth in the Lanterman Act and Title 17;
  - Have a demonstrated understanding of the IPP process and the legal rights of people with developmental disabilities in California; and,
  - Have experience with the provision of SLS in California.
- The Department must establish a rate of payment for an independent assessment.
- The planning team must consider the independent assessment along with the
  provider's assessment, if available, and any other relevant information in
  determining whether there should be any adjustment to the amount or type of
  supports currently being received by individuals in supported living arrangements
  or recommended for individuals initially entering supported living arrangements.
  Any decisions to reduce supports shall not be applied retroactively.

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- A consumer shall be reassessed every three years in conjunction with the consumer's IPP review to determine whether all services are necessary and sufficient and to ensure that the most cost-effective methods of service are being utilized.
- Individuals who are moving to a supported living arrangement or have moved to a supported living arrangement from a developmental center or state-operated community facility are not required to have an additional assessment during the first 12 months following placement.
- Upon a determination of a reduction in service, the regional center must inform the consumer of the reason for the determination, and provide a written notice of fair hearing rights pursuant to section 4701.
- Nothing precludes the completion of an independent assessment for other purposes.

Implementation: The purpose of the independent assessment is to provide an additional look at whether the SLS being provided to, or proposed for, the consumer are necessary, sufficient, or cost-effective to meet the consumer's choices and needs. Commencing July 1, 2011, regional centers must identify consumers currently receiving SLS, whose annual SLS costs exceed 125 percent of the annual statewide average cost of SLS. The regional center must also identify consumers who have an initial recommendation for SLS costs that exceed 125 percent of the annual statewide average cost of SLS. For these consumers the regional center must arrange for an independent assessment to be completed prior to the next scheduled IPP for consumers currently in a supported living arrangement and within 30 days of identification of consumers with an initial recommendation for services. As required by law, the Department has published on its homepage the annual statewide average cost of SLS, and 125 percent of the annual statewide average cost of SLS. Commencing July 1, 2011, the annual average cost of SLS is \$44,196 and 125 percent of the average annual cost of SLS is \$55,245.

Regional centers shall use <u>only</u> one of the following service codes when purchasing an independent assessment: 1) Supported Living Services, Service Code 896, if the assessor is a current SLS vendor, or 2) Independent Living Specialist, Service Code Independent Living Specialist - Service Code 635. Use of any other service code (Ex. 056) previously used for independent assessments must be discontinued.

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When purchasing the independent assessment under either of these service codes, the purchase should additionally be sub coded as:

• INAS - Independent Assessment "Big Claim" Program Code 00

The rate for an independent assessment under both service code 896 and 635 can not exceed \$50.00 an hour nor \$1,000 in total.

# **Annual Family Program Fee**

<u>TBL Section 22</u>: Section 4785 was added, stating that effective July 1, 2011, regional centers must assess an annual family program fee, as described below, from parents whose adjusted gross family income is at or above 400 percent of the federal poverty level based upon family size and who have a child to whom all of the following apply:

- The child has a developmental disability or is eligible for Early Start services;
- The child is less than 18 years of age;
- The child lives with his or her parent;
- The child or family receives services beyond eligibility determination, needs assessment, and service coordination; and,
- The child does not receive services through the Medi-Cal program.

An annual family program fee shall not be assessed or collected if the child receives only respite, day care, or camping services from the regional center, and a cost for participation is assessed to the parents under the Family Cost Participation Program. The annual family program fee shall be initially assessed by a regional center at the time of the development, scheduled review, or modification of the IPP or IFSP, but no later than June 30, 2012, and annually thereafter. Application of the annual family program fee to children zero through two years of age, is contingent upon necessary approval by the United States Department of Education.

The annual family program fee for parents described above shall be two hundred dollars (\$200) per family, regardless of the number of children in the family with developmental disabilities or who are eligible for services under Early Start. Parents who demonstrate to the regional center that their adjusted gross family income is less than 800 percent of the federal poverty level shall be required to pay an annual family program fee of one hundred fifty dollars (\$150) per family, regardless of the number of children in the family with developmental disabilities or who are eligible for Early Start.

At the time of intake or at the time of development, scheduled review, or modification of a consumer's IPP or IFSP, but no later than June 30, 2012, the regional center must provide to parents described above a form and an envelope for the mailing of the annual family program fee to the Department. The form, which must include the name

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of the children in the family currently being served by a regional center and their unique client identifiers, must be sent, with the family's annual program fee, to the Department. The Department will notify each regional center at least quarterly of the annual family program fees collected.

The regional center must, within 30 days after notification from the Department, provide a written notification to the parents from whom the Department has not received the annual family program fees. Regional centers must notify the Department if a family receiving notification has failed to pay its annual family program fees based on the subsequent notice. For these families, the Department will pursue collection pursuant to the Accounts Receivable Management Act (Chapter 4.3 (commencing with section 16580) of Part 2 of Division 4 of Title 2 of the Gov. Code).

A regional center may grant an exemption to the assessment of an annual family program fee if the parents demonstrate any of the following:

- That the exemption is necessary to maintain the child in the family home;
- The existence of an extraordinary event that impacts the parents' ability to pay
  the fee or the parents' ability to meet the care and supervision needs of the child;
  or,
- The existence of a catastrophic loss that temporarily limits the ability of the
  parents to pay and creates a direct economic impact on the family. Catastrophic
  loss may include, but is not limited to, natural disasters, accidents involving, or
  major injuries to, an immediate family member, and extraordinary medical
  expenses.

Services may not be delayed or denied for a consumer or child based upon the lack of payment of the annual family program fee. "Parents" means the parents, whether natural, adoptive, or both, of a child with developmental disabilities under 18 years of age. Parents described above are jointly and severally responsible for the annual family program fee, unless a court order directs otherwise.

"Total adjusted gross family income" means income acquired, earned, or received by parents as payment for labor or services, support, gift, or inheritance, or parents' return on investments. It also includes the community property interest of a parent in the gross adjusted income of a stepparent. The total adjusted gross family income shall be determined by adding the gross income of both parents, regardless of whether they are divorced or legally separated, unless a court order directs otherwise, or unless the custodial parent certifies in writing that income information from the noncustodial parent cannot be obtained from the noncustodial parent and in this circumstance only the income of the custodial parent shall be used to determine the annual family program fee.

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This new law sunsets on June 30, 2013, and as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before June 30, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

<u>Implementation</u>: The Department will be sending out implementation information under separate cover. The Department will provide regional centers with the standard forms to be provided to families, and related instructions; information on the federal poverty level applicable for 2011; and, the interim process for exchange of information between regional centers and the Department.

# 4.25 Percent Payment Reduction

TBL Section 24: Section 10 of Chapter 13 of the Third Extraordinary Session of the Statutes of 2009, as amended by Section 16 of Chapter 9 of the Statutes of 2011, was amended providing that to implement changes in the level of funding for regional center purchase of services, regional centers must reduce payments for services and supports provided pursuant to Title 14 (commencing with section 95000) of the Gov. Code and Division 4.1 (commencing with section 4400) and Division 4.5 (commencing with section 4500). From February 1, 2009, to June 30, 2010, regional centers were required to reduce all payments for these services and supports paid from purchase of services funds for services delivered on or after February 1, 2009, by 3 percent, and from July 1, 2010, to June 30, 2012, by 4.25 percent, unless the regional center demonstrates that a nonreduced payment is necessary to protect the health and safety of the individual for whom the services and supports are proposed to be purchased, and the Department has granted prior written approval.

Regional centers shall not reduce payments for:

- Supported employment services with rates set by section 4860;
- Services with "usual and customary" rates established pursuant to Title 17 section 57210, except as provided below; and,
- Payments to offset reductions in Supplemental Security Income/State Supplementary Payment (SSI/SSP) benefits for consumers receiving supported and independent living services.

The exemption provided for above for services with a usual and customary rate shall not apply to payments for any of the following services:

- Crisis and behavioral services provided by a nationally certified or state-licensed professional, consistent with the professional's scope of practice, as set forth in the Business and Professions Code.
- Services of group practices providing behavioral intervention.
- Parent-coordinator home-based behavioral intervention for children with autism.
- Individual or family training.

Regional Center Directors and Board Presidents August 4, 2011 Page eighteen

- · Registered nurse services.
- Therapy services, including physical, speech, occupational, recreational, and music therapy.
- Audiology services.
- · Independent living specialist services.
- · Translator and interpreter services.
- Mobility training, socialization training, or community integration training services.
- Community activities support, program support, or parenting support services.
- Personal assistance services.
- Tutoring services.
- Creative arts services.
- Early start specialized therapeutic services.

<u>Implementation</u>: If the regional center has accepted a usual and customary rate as the rate of payment for any of the providers of services reflected in the list directly above, the regional center, effective July 1, 2011, must apply the 4.25 percent payment reduction.

<u>TBL Section 23</u>: Section 7502.5 was amended specifying that the total number of developmental center residents in the secure treatment facility at Porterville Developmental Center (PDC), including those residents receiving services in the PDC transition treatment program, shall not exceed 230. The Department shall not admit any persons into the secure treatment facility at PDC until the population of the secure treatment facility is less than 230 persons. To maximize federal financial participation, the Department shall not admit any more than 104 people who are ineligible to participate in programs certified for federal financial participation into the secure treatment facility at PDC.

If you have any questions regarding this correspondence, please contact Brian Winfield, at (916) 654-1569.

Sincerely,

ORIGINAL SIGNED BY BRIAN WINFIELD FOR

RITA WALKER
Deputy Director
Community Operations Division

cc: Robert Baldo, ARCA Mark Hutchinson, DDS

# **CONSUMER GUIDE**



A PROGRAM FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

# ALTA CALIFORNIA REGIONAL CENTER

www.altaregional.org

# **Mission Statement:**

It is the mission of the Alta California Regional Center to assist individuals with developmental disabilities, including infants at risk and their families, by providing and securing those services and supports necessary to maximize opportunities and choices.

It is our belief that the principal test of the success of the Alta California Regional Center is the extent to which it enhances the quality of individual and family life and improves the consumer's and the family's satisfaction with the services received from or through the Regional Center.

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# HISTORY OF REGIONAL CENTERS/THE LANTERMAN ACT

The twenty-one regional centers within the State of California provide a coordinated system for diagnosing individuals suspected of or having a developmental disability and helping people with these disabilities to make use of all essential public and private services to meet their special needs (medical and dental, educational, recreational, vocational, social and emotional).

The regional center system was established to provide coordinated planning for lifetime community care for people with developmental disability as a viable alternative to Developmental Center placement.

The goal of regional center services is to enhance and maximize the functioning of each person with a developmental disability, to avoid the development of secondary disabilities, and to reduce the incidence of developmental disabilities through a vigorous program of identification, education, and prevention.

At Alta California Regional Center we utilize the philosophy of "supported life" to accomplish these goals.

Regional centers were established through state legislation sponsored primarily by Assemblyman Frank Lanterman. In 1965, pilot projects were initiated in San Francisco and Los Angeles to assist mentally retarded persons and their families in locating, or spearheading the development of community services and programs for their special needs.

In 1969, AB 225 (Lanterman Mental Retardation Services Act) established a statewide system of regional centers based upon the pilot projects. In the first three years of operation, there were seven regional centers statewide; since then the number of regional centers has grown to the current number of twenty-one.

In 1974, the additional legislation (AB 846-Lanterman) went into effect which expanded the clientele served by the regional centers to include persons with cerebral palsy, epilepsy, autism, and other significantly handicapping conditions found to be closely related to mental retardation.

It has been estimated that 5% of the population in California has a significant developmental disability. Regional Centers currently serve approximately 180,000 people.

Alta California Regional Center currently serves the residents of Alpine, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, and Yuba counties (see back cover for addresses and phone numbers of our branch offices).

## REGIONAL CENTER FUNDING

Like all of the other regional centers in the state, Alta California Regional Center is a private nonprofit corporation that operates under an annual contract with the State Department of Developmental Services. Most of the regional center funds come from public tax dollars.

There is no charge for services rendered during diagnosis and assessment for eligibility or for most services. The State of California currently requires parents of children under age 18 who are in continuous 24-hour out-of-home placement to reimburse the state for a portion of the placement cost, according to their ability to pay.

# **DEVELOPMENTAL DISABILITIES**

According to the Lanterman Developmental Disabilities Act (AB 846), "developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or other handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required individuals with mental retardation. Such a disability originates before an individual attains age 18, continues or can be expected to continue indefinitely, and constitutes a substantial handicap for such individuals.

<u>Substantial Handicap</u> means a condition that results in major impairment of cognitive and/or social functioning. Moreover, a substantial handicap represents a condition of sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential. Since an individual's cognitive and/or social functioning are multi-faceted, the existence of a major impairment shall be determined through an assessment which shall address aspects of functioning including, but not limited to: communication, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

#### MENTAL RETARDATION

Mental retardation refers to substantial limitations in present functioning. It is characterized by:

- 1. Significantly sub-average intellectual functioning, existing concurrently with:
- 2. Related limitations in two or more of the following applicable adaptive skill areas:
  - communication
  - self-care
  - home living
  - · social skills
  - · community use
  - · self-direction
  - · health and safety
  - · functional academics
  - leisure
  - · work
- 3. Mental retardation manifests before age 18.

In general, an IQ below 70 falls within the range of Mental Retardation. With appropriate supports over a sustained period, the life functioning of the person with mental retardation will generally improve.

The term "appropriate supports" means an array of services, supportive individuals, and receptive settings that match an individual's needs. It is likely that supports will be needed over an extended period of time, and for many, lifelong supports will be needed. For some, however, certain supports may be intermittent or short-term. Most people with mental retardation will improve their functioning with effective supports, allowing them to live more productive, independent, and integrated lives. A lack of improvement in functioning can serve as a basis for re-evaluating the supports. In rare circumstances, supports can serve to merely maintain a level of functioning or slow a regression of level of functioning. (AAMR 1993)

#### CEREBRAL PALSY

Cerebral palsy is a non-progressive pathologic lesion in the developing infant or child's brain causing permanent motor and/or sensory impairment (American Academy of Pediatrics).

There are both various types and degrees of cerebral palsy. It may be diagnosed when delayed gross motor development, abnormal motor performance, alterations of muscle tone, abnormal postures at rest, and reflex abnormalities become discernible. The four most common types of cerebral palsy are spastic, athetoid, ataxic, and mixed.

Cerebral palsy is the most common permanent physical disability of childhood. Its incidence has been estimated at 5 per 1,000 in the population under 21 years. Approximately one third of the children with cerebral palsy have normal intelligence while the remainder may have some deficits in their learning abilities. Approximately half of the children with cerebral palsy have some type of seizures.

#### **EPILEPSY**

Epilepsy (convulsive disorder) is a clinical disorder involving impairment of consciousness, characterized by paroxysmal attacks of loss of consciousness associated with clinical abnormalities noted on brain wave testing (EEG), convulsive movements, or disturbances of feeling or behavior. These transient episodes (seizures) are associated with excessive nerve cell discharges occurring diffusely or focally in the brain. The sites of the neuronal discharges determine the clinical manifestations of the seizure.

About 1% of the general population has epilepsy, three-fourths of whom develop it before the age of twenty-one. It is estimated that about one-half of the epileptic population in California is undiagnosed or unrecognized. Of the diagnosed epileptics, about 80% will have a good control of seizures through medication; another 10% will obtain fair medical control; and the remaining 10% will be poorly controlled or intractable.

The major types of seizures include grand mal seizures, focal (frontal, parietal, or occipital lobe) seizures, temporal lobe (psychomotor) seizures, and minor (petit mal, myoclonic, akinetic) seizures. About 3% of all children may have benign febrile convulsions.

Epilepsy is diagnosed by a physician following a neurological evaluation. Frequently an EEG is ordered to determine the type and degree of brain wave abnormality. If a person with epilepsy is placed on medication to control the seizure activity, blood levels are requested periodically to determine the level of medication in the body.

#### **AUTISM**

Autism is a syndrome first appearing in the very early years of life, usually before three years, which is characterized by extreme withdrawal, language disturbance, inability to form affective ties, frequent lack of responsiveness to other people, monotonously repetitive motor behaviors, inappropriate response to external stimuli, and an obsessive urge for the maintenance of sameness. The incidence of autism is less than 1% of the general population.

Many, but not all, autistic children may be severely impaired in inherent intellectual capacities (approximately 80% are functioning in the mentally retarded range). About 10-30% of autistic youngsters eventually develop seizures.

The diagnosis of autism is made by a physician or psychologist on the basis of developmental history and clinical manifestations. The diagnosis is generally made between the ages of two and four years.

# CAUSES OF DEVELOPMENTAL DISABILITIES

Developmental disabilities are caused by many different kinds of trauma to the developing brain and nervous system. In many cases it is difficult to pinpoint the exact cause of the damage or time when it occurred. Many specific agents are known, however, to cause developmental disabilities or to be associated with an increased risk of developing a disability and these are divided into nine broad categories:

- 1. Childhood accidents (including auto accidents, falls, near drowning, burns, and child abuse).
- 2. Drug and toxic substance poisoning (including the use of alcohol, caffeine, cigarettes, and other drugs both prescription and over-the-counter, as well as "street drugs" while in utero or through ingestion during childhood).
- 3. Genetic disorders (for example: Down Syndrome, Tay-Sachs Disease).
- 4. High-risk conditions in women and infants (for example: pregnant women under fifteen years of age or over thirty-five years of age, maternal epilepsy requiring certain drug therapy, maternal diabetes, maternal history of repeated abortions, fetal deaths, delivery of very large or very small infants, infectious diseases during pregnancy, etc.).
- 5. Lead poisoning (including lead from paint, lead-glazed pottery, lead water pipes, and dirt contaminated by automobile exhaust).
- 6. Metabolic disorders (for example: PKU, hypothyroidism, and galactosemia).
- 7. Malnutrition.
- 8. RH blood disease.
- 9. Intrauterine and other infectious diseases (including rubella, cytomegalovirus infection, toxoplasmosis, syphilis, herpes, and enterovirus infections).

#### INTAKE

Any resident of our ten-county service area with a known or suspected developmental disability is eligible for an assessment of diagnosis, and a determination of eligibility for Regional Center services. Your first contact with the Regional Center will generally be through the Intake Unit. You may call or come in person to initiate services. You will be

assisted through this process by an Intake Counselor. These Masters Degree level counselors are specially trained to provide you with information, assist with diagnosis, provide crisis intervention if necessary, and develop a psychosocial assessment of your unique history and situation. This counselor will arrange, if appropriate, for you to meet with one of our other specialists in order to do further diagnostic assessments. All of the information secured during the Intake process will be used to determine eligibility for Regional Center services. This process of eligibility determination is accomplished though a Multi-Disciplinary Team comprised of a Physician, a Psychologist, Nurses, and Social Workers.

Once eligibility has been established, the individual will be assigned an ACRC Service Coordinator who will take responsibility for convening a planning team meeting for the purpose of developing an **Individual Program Plan**.

#### THE INDIVIDUAL PROGRAM PLAN

The Lanterman Developmental Disabilities Act requires that a person who receives services from a regional center have an Individual Program Plan (IPP). "Person-Centered Planning" is a critical element of the IPP process. Person-centered planning is about listening to consumers and their families about things like: where they want to live; how they want to spend their day; who they want to spend time with; and their hopes and dreams for their future. It is about supporting people in the choices they make about their life and giving people all the information they need to make those choices. The service coordinator helps write the IPP, looks for services and supports when needed and makes sure that the services that people get are the ones they need.

#### **EARLY INTERVENTION SERVICES**

Early intervention is not a cure for disabilities or risk conditions. It is a system of coordinated services that promotes the child's growth and development and that supports families during the critical early years. Early intervention services to eligible children and families are federally mandated by the Individuals with Disabilities Education Act and in California by S.B. 1085, the California Early Intervention Services Act.

Research shows that participation in family-centered, early intervention services during the first three years of life can have significant effects on the cognitive development and social adjustment of low birth weight, premature children and on the overall development of young children with disabilities.

Infants and toddlers from birth to 36 months may be eligible for and benefit from early intervention services if one of the following factors is present:

(1) Significant developmental delay in one or more of these areas:

- Cognitive development, e.g., limited interest in environment, limited interest in play and learning
- Physical and motor development, including vision and hearing, e.g., hypertonia, dystonia, asymmetry
- Communication development, e.g., limited sound repertoire, limited responses to communication with others
- Emotional-social development, e.g., unusual responses to interactions, impaired attachment, self-injurious behavior
- · Adaptive development, e.g., feeding difficulties.
- (2) Established risk conditions of known etiology or those conditions expected to result in significant developmental problems such as:
  - · Chromosomal disorders.
  - Neurological disorders,
  - Inborn errors of metabolism, or
  - · Visual and hearing impairments.
- (3) High risk of having a substantial developmental disability due to a combination of risk factors such as:
  - Prematurity (less than 32 weeks gestation and/or low birth weight of less than 1,500 grams).
  - · Asphyxia or need for ventilator assistance
  - · Central nervous system infection or abnormality
  - Biomedical insult (including but not limited to injury, accident or illness which may seriously or permanently affect developmental outcome), or
  - Parent with a developmental disability.

# Within 45 days after referral is received:

- · A Service Coordinator is assigned
- An evaluation for eligibility is completed
- · An assessment is conducted for program planning
- A peer parent contact may be available, and
- · A meeting will be held to develop the Individual Family Service Plan (IFSP) to

initiate child and family services.

Early intervention services under Early Start are provided by regional centers and local education agencies throughout California and include:

- Assistive technology devices/services
- Audiology (hearing) services
- Family training, counseling and home visits
- Some health services
- Medical services for diagnostic or evaluative purposes only
- Nursing
- Nutrition counseling
- Occupational therapy
- Physical therapy
- Psychological services
- Respite
- Service Coordination (case management)
- Social work services
- · Special instruction
- Speech and language services
- Transportation services
- Vision services
- · Others as needed

# CALIFORNIA EARLY START PROGRAM SERVING INFANTS 0-36 MONTHS FAIR HEARING PROCEDURES

#### Right to a Fair Hearing

There may be occasions when a parent, guardian or an authorized representative of a client or potential client aged 0-36 months is dissatisfied with the decision or action of the Regional Center which is felt to be illegal, discriminatory or not in the infant's best interest. Every effort will be made to resolve disagreements at the lowest possible administrative level. One method of resolving disagreement is to request an Informal Mediation meeting with the Regional Center Director or his/her designee. This meeting must take place within ten (10) days of the request for fair hearing. A written decision will be issued within five (5) days following the Informal Mediation meeting. If local administrative efforts are unsuccessful, a formal Due Process Fair Hearing shall be made available to the applicant or recipient of services. These procedures are authorized in federal regulations (34 CFR Sections 303.420 through 303.425) and the California Government Code (Title 14, Section 95007). The appeal must be initiated within thirty (30) days from the time of receipt of notice of the proposed action.

#### CLINICAL SERVICES

The Clinical Team at Alta California Regional Center is currently composed of physicians, nurses, clinical psychologists, behavior analysts and a clinical pharmacologist. The Clinical Team works very closely with the Intake and Early Intervention Units. Services that are provided by the Clinical Team include:

# Bates Specialized Care for Medically Fragile Infants and Children with Special Nursing Needs

The Clinical Team provides direct medical and nursing consultation with development of health care plans and coordination with Community Care Licensing.

#### Case Conferences

Nursing, medical, behavioral, psychological, and pharmacological case conferences are offered to the service coordinators, consumers, residential care providers, and parents to help sort out complicated medical, behavioral, mental health, and medication issues.

#### Consent for Care

By the Lanterman Act, the physicians provide medical consent for care for individual consumers who are non-conserved and without involved family members. Appropriateness of care must be within standard health care practice parameters. Consent will not be provided for controversial procedures, for example: abortion, sterilization, HIV testing, DO NOT RESUSCITATE orders.

# **Developmental Center Community Placement**

The Clinical Team helps support community placement of consumers with coordination of necessary health care services.

#### Diagnostic

The Clinical Team provides medical, nursing, dental, and psychological assessments for individual consumers for diagnosis, treatment monitoring and comprehensive health planning.

# George F. Kelso Foundation Library

The Clinical Team helps maintain current scientific and lay publications of written audio, and video materials on developmental disabilities.

# Immigration, Naturalization Services and Supplemental Security Income

The Clinical Team reviews medical, nursing, and psychological records and writes health statements certifying an individual's disability.

## **Non-Conventional Health Practices**

Clinical Team members may review alternative testimonial and non-conventional health practices to determine the appropriateness and empirical support for individual therapy or treatment.

#### **Pharmacology Consultation**

This service is available for residential care providers and families to learn appropriate medication dispensation and documentation as well as to review an individual consumer's medications for drug or drug/disease interactions and/or side effects.

#### Psychological/Behavioral Supports

Beyond diagnostic services, psychologists and behavior analysts are available to assess significant behavioral and emotional problems, conduct competency and court-ordered determinations, provide documentation for conservatorships, and

provide ongoing behavioral training.

## **Special Incident Evaluations**

The Clinical Team supports investigations of special incidents including mortality, child/adult abuse, unlawful conduct, and lack of appropriate residential care.

#### Special Team Support

The Clinical Team provides consultative support for: 1) Intake Eligibility Unit, 2) Early Intervention Unit [0-3 years], 3) Intensive Support Services Unit, and 4) Case Management.

# **Supports and Services Committee**

The Clinical Team members are available to assist the ACRC service coordinators and consumers in determining the most appropriate health care related services and supports.

# Supportive Resource Development

Team members assist the community in developing services appropriate for individuals with developmental disabilities.

#### **Vendorization Training for Care Givers**

The Clinical Team provides training for individuals interested in becoming residential care providers as well as ongoing consultative support for residential care providers.

#### Wellness Monitoring

A Wellness Team is available to identify health risks to consumers to evaluate and assist consumers, the residential care providers and families in obtaining appropriate health services, as well as to educate consumers and care providers in preventive practices for all of the above.

# THE PROFESSIONAL STAFF OF ALTA CALIFORNIA REGIONAL CENTER

THE PHYSICIANS are licensed by the California Board of Medical Examiners. They provide the initial diagnosis and may also request additional evaluations from other community resources such as a speech and hearing assessment, an eye examination, an orthopedic assessment, etc., in order to rule out or identify other contributing factors to the delay. With infants, it is frequently impossible to assess the severity of delay, and consequently, a prognosis is often postponed until the child is of preschool age. Sometimes parents are asked to bring their child in annually or semi-annually for the pediatrician to follow the child's progress and document the rate of growth. Each family is also encouraged to have their child followed by a community physician for well and sick baby care, including shots and immunizations.

THE CLINICAL PSYCHOLOGISTS have a Ph.D. in psychology and are licensed by the California Board of Psychology. They have training and expertise in psychological and clinical assessments of people with developmental disabilities, and parent training in the behavior management of children. The staff psychologists generally first assess a child between the ages of three and five to determine the child's pre-academic strengths and deficits and to discuss appropriate preschool or school placement with the child's parents.

Once a child enters school, it is the responsibility of the school district's psychologists to periodically retest the child for continued appropriateness of special class placement. If, for some reason, parents or guardians are concerned about testing performed by some other agency or institution, regional center psychologists are available to provide some consultation or reassessment.

<u>BEHAVIOR ANALYSTS</u> have a Master's Degrees in Psychology or related field, with formal training in Applied Behavior Analysis. They coordinate, review and monitor parent training, behavior intervention, residential one-to-one staffing, and early autism treatment programs. They consult with service coordinators, care providers, and day program providers on effective behavioral intervention plans.

THE NURSING CONSULTANTS are licensed by the California Board of Registered Nursing and are all Certified Public Health nurses. They provide nursing assessments and ongoing consultation for consumers, families, and staff. The nurses can assess care issues and equipment needs. They, additionally, do eligibility assessments and ongoing medical monitoring for medically fragile consumers. Nursing consultations are available to all regional center consumers.

THE PHARMACOLOGY CONSULTANT has a Clinical Pharmacology Degree (Pharm D). The consulting pharmacologist performs individual consumer medication reviews in order to prevent drug-disease, drug-drug interaction side effects and appropriate use of medication at the lowest dose. Additionally the pharmacologist reviews residential care homes dispensation practices to make certain no significant errors are occurring. The consultant also provides inservice evaluation to service coordinators, residential care providers, members of the Clinical Team and community health practitioners.

<u>SERVICE COORDINATORS</u> may have a Master's Degree in social work and at least two years of post-Master's experience or have a Bachelor's Degree and at least two years of experience in the field of developmental disabilities.

The Service Coordinator identifies case needs, provides coordination of services to the individual (case management), provides counseling to the parents on problems related to having a child with developmental disabilities, provides referral to other agencies to meet other types of family or individual needs, and serves as an advocate for the individual with developmental disabilities. As the case manager, the Service Coordinator schedules a staffing with the pediatrician, nurse, psychologist, and/or other professionals whenever needed. The Service Coordinator also has the responsibility for ongoing services, such as arranging for purchased services outlined in the Individual Program Plan. In addition, Service Coordinators as well as other staff members are available for public speaking on regional center services, and serve as consultants to community programs serving persons with developmental disabilities.

There are specialized service coordinators to assist families who request out-of-home placement for their developmentally disabled member. They help families to locate an appropriate placement facility, assist in the financial arrangements, apply for Supplemental

Security Income benefits, and complete necessary paperwork. These staff members also supervise all clients residing in community care facilities. Most of these facilities are small and home-like and are operated by skilled and experienced care providers.

ACRC also has specialized coordinators who supervise all of the individuals with developmental disabilities from our ten-county geographic area who reside in one of the State Developmental Centers within California. The regional center controls all admissions of individuals with developmental disabilities to the State Developmental Center system and assists in discharge planning for community re-entry.

# FAIR HEARING, COMPLAINT PROCESS, AND ADVOCACY RESOURCES

Alta California Regional Center (ACRC) is required under Welfare and Institutions Code Sections 4700-4730 to have a fair hearing procedure. If you are a consumer or a potential consumer of a regional center or his/her parent, guardian, conservator, or representative, you have the right to appeal any decision made by the regional center affecting the consumer or potential consumer that you feel is illegal, discriminatory, or not in his/her best interests.

A fair hearing is initiated by filling out the ACRC "Fair Hearing Request" form and submitting it to the Director. Assistance in filling out the form is available. You must submit your request for a fair hearing within thirty (30) days from the day you were notified of the regional center action.

#### Fair Hearing Rights

During the fair hearing procedure you have the following rights:

- 1) A right to written notice, in a language that you can understand, of regional center fair hearing proceedings.
- 2) A right to written notice, in a language that you can understand, of all decisions made in any regional center fair hearing procedure.
- 3) A right to an interpreter, at regional center expense, if you do not speak English.
- 4) A right to attend and participate in all fair hearing proceedings.
- 5) A right to a public hearing except at the request of the claimant or authorized representative or when personnel matters are to be discussed.
- 6) A right to be represented by person(s) of your choice, at your expense.
- 7) A right to call and examine witnesses, to introduce exhibits, to cross examine
  - opposing witnesses and to have any relevant evidence admitted.
- 8) A right to access your regional center records.

If your fair hearing request is postmarked or received by ACRC no later than ten (10) days after receipt of the notice of proposed action, your services will continue up to and

including the tenth (10th) day after receipt of the certified mailing of the decision.

If you have any questions, please call Alta California Regional Center at (916) 978-6400.

#### **COMPLAINT PROCESS**

You can file a complaint:

A complaint is governed by California law (W.I. §4731) and must be completed within a specific time frame. A complaint cannot be filed to resolve disputes where other appeal procedures already exist in law.

Write to "Client's Rights Advocate," Office of Client's Rights Advocacy (OCRA), 100 Howe Avenue, Suite 240 N, Sacramento, CA 95825, or let a Regional Center employee know you want to file a complaint.

# **ADVOCACY RESOURCES LIST**

Office of Client's Rights Advocacy (OCRA) [part of Protection & Advocacy Inc., (PAI)] 100 Howe Avenue, Suite 240N Sacramento CA 95825
Phone: (916) 575, 1615

Phone: (916) 575-1615 FAX: (916) 575-1623 TTY: 1-877-669-6023

Advocacy, Resources & Choices 700 Douglas Blvd Roseville CA 95678 Phone:(916) 624-2467

Legal Center for the Elderly and Disabled 1605 Dreher Street Sacramento CA 95814 Phone:(916) 446-4851 TDD: (916) 446-4855

Sacramento Association for the Retarded 1791 Tribute Road, Suite A Sacramento CA 95815 Phone: (916) 452-4743 FAX: (916) 568-2144

Developmental Disabilities Area Board III 1507 21 Street, Suite 220 Sacramento 95814 Phone: (916) 324-7426 FAX: (916) 263-1155 http://www.areaboard3.org

Families for Early Autism Treatment (FEAT)
PO Box 255722
Sacramento, CA 95865-5722
Voicemail: (916) 843-1536
FAX: (916) 381-5029
http://www.feat.org

# WHERE TO APPLY:

## LANTERMAN ACT AND RELATED LAWS

representatives from the local district office, and the State Department of Developmental Services center staff. The meeting shall be held at least annually to better coordinate services and supports provided to regional center consumers in licensed health facilities.

(Added by Stats. 1998, Ch. 1043, Sec. 31. Effective January 1, 1999.)

Services and supports listed in the individual program plan may include, but are not limited to:

diagnosis;
evaluation;
treatment; personal
care;
day care; domiciliary
саге;
special living arrangements;
physical, occupational, and speech therapy;
training;
education;
supported and sheltered employment;
mental health services;
recreation;
counseling of the individual with a developmental disability and of his or her family;
protective and other social and sociologic services; information
and referral services;

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follow-along services;
   adaptive equipment and supplies;
  advocacy assistance, including self-advocacy training, facilitation and peer advocates;
  assessment;
  assistance in locating a home;
  childcare;
 behavior training and behavior modification programs;
 camping;
 community integration services;
 community support;
 daily living skills training; emergency and
 crisis intervention; facilitating circles of
 support; habilitation;
homemaker services;
infant stimulation programs; paid
roommates;
paid neighbors;
respite;
short term out-of-home care;
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social skills training;

specialized medical and dental care;

supported living arrangements;

technical and financial assistance;

travel training;

training for parents of children with developmental disabilities; training for

parents with developmental disabilities;

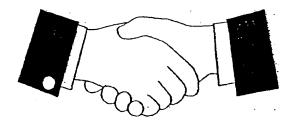
vouchers;

transportation services necessary to ensure delivery of services to persons with developmental disabilities.

## YOUR IPP

INDIVIDUAL PROGRAM PLAN

#### IT'S NOT JUST A PIECE OF PAPER!



A SELF-ADVOCACY MANUAL FOR PEOPLE WHO GET SERVICES FROM REGIONAL CENTERS

Capitol People First and Protection & Advocacy, Inc.
Peer Advocacy Project
1994
(Revised March 1998)

#### THE LAW THE LANTERMAN ACT



IN CALIFORNIA, PEOPLE WITH DEVELOPMENTAL DISABILITIES HAVE THE RIGHT TO HELP AND SERVICES. THE LAW SAYS THAT PEOPLE WHO GET SERVICES FROM REGIONAL CENTERS HAVE THE RIGHT TO DECIDE WHAT KIND OF HELP THEY WANT AND NEED AND TO MAKE CHOICES ABOUT THEIR LIVES.

THE LAW SAYS THAT PEOPLE HAVE THE RIGHT TO MAKE CHOICES ABOUT:



WHERE TO LIVE

WHERE TO WORK





WHO TO LIVE WITH

### WHO TO HAVE FOR FRIENDS



#### WHAT TO DO IN THE YEARS AHEAD



#### THE LAW SAYS THAT YOU HAVE A RIGHT TO:



YOUR OWN WRITTEN INDIVIDUAL PROGRAM PLAN (IPP) THAT LISTS YOUR GOALS AND THE SERVICES YOU NEED. THIS IS ALSO CALLED A PERSON CENTERED PLAN SOMETIMES. THIS MANUAL WILL USE THE TERM INDIVIDUAL PROGRAM PLAN (IPP) BECAUSE THAT IS THE PHRASE THE LAW USES.

SERVICES AND HELP THAT ARE PROVIDED
TO YOU IN PLACES THAT ARE AS NORMAL AS
POSSIBLE - NOT IN INSTITUTIONS OR PLACES
ONLY FOR PEOPLE LABELED
"RETARDED", BUT IN NATURAL COMMUNITY
PLACES, AND





#### THE LAW SAYS THAT:



YOUR OWN WRITTEN INDIVIDUAL PROGRAM PLAN (IPP) MUST LIST YOUR GOALS AND THE SERVICES YOU NEED TO LIVE MORE INDEPENDENTLY IN THE COMMUNITY.

YOU HAVE THE RIGHT TO BE A BIG PART OF MAKING YOUR PLAN.





THE REGIONAL CENTER AND OTHER AGENCIES THAT PROVIDE SERVICES TO YOU, LIKE GROUP HOMES AND WORKSHOPS, MUST HELP YOU CHOOSE WHAT SERVICES YOU WANT.

THE INFORMATION YOU NEED TO CHOOSE THE SERVICES YOU WANT MUST BE GIVEN TO YOU IN A WAY YOU UNDERSTAND. THIS IS CALLED "INFORMED CHOICE".



#### WHAT IS YOUR IPP?

YOUR IPP IS <u>YOUR</u> INDIVIDUAL PROGRAM PLAN. IT IS <u>YOUR</u> OWN ACTION PLAN ABOUT THE HELP YOU NEED TO LIVE LIKE YOU WANT.





IT IS A WRITTEN AGREEMENT OR CONTRACT BETWEEN YOU AND YOUR REGIONAL CENTER:

IT IS MADE BY YOU AND YOUR REGIONAL CENTER SERVICE COORDINATOR (CASE MANAGERS OR SOCIAL WORKERS ARE NOW GENERALLY CALLED SERVICE COORDINATORS) AND OTHER PEOPLE YOU INVITE TO THE MEETING. THE REGIONAL CENTER MAY ALSO HAVE PEOPLE IT THINKS WILL BE HELPFUL TO YOU ATTEND THE MEETING.



IT LISTS THE SERVICES THAT YOU NEED AND WANT TO BE MORE INDEPENDENT AND TO LIVE THE WAY YOU LIKE.

#### WHY IS YOUR IPP IMPORTANT?



YOUR IPP IS IMPORTANT BECAUSE IT TELLS ABOUT WHAT SERVICES AND HELP THE REGIONAL CENTER WILL GET FOR YOU:



YOUR REGIONAL CENTER MUST PROVIDE YOU WITH THE SERVICES LISTED IN <u>YOUR</u> IPP - THAT IS THE LAW (THE LANTERMAN ACT).



IF SOMETHING IS WRITTEN IN <u>YOUR</u> IPP, THE REGIONAL CENTER <u>MUST</u> GIVE IT TO <u>YOU</u>. YOU ARE ENTITLED TO IT. USUALLY THE REGIONAL CEN'T'ER MUST BUY SERVICES FOR YOU FROM ANOTHER AGENCY.



IF SOMETHING IS NOT WRITTEN IN YOUR IPP, YOU CANNOT COUNT ON GETTING IT.



YOUR REGIONAL CENTER CANNOT CHANGE WHAT IS IN YOUR IPP WITHOUT HAVING A MEETING WITH YOU. THAT IS IN THE LAW TOO.

## WHY IS YOUR IPP <u>MEETING</u> IMPORTANT?



YOUR IPP MEETING IS IMPORTANT BECAUSE THAT IS THE ONLY TIME AND PLACE WHERE YOUR IPP CAN BE OFFICIALLY TALKED ABOUT AND WRITTEN UP.



YOU HAVE A RIGHT TO BE AT YOUR IPP MEETING AND TELL PEOPLE WHAT KIND OF HELP AND SERVICES YOU NEED THE REGIONAL CENTER TO GET FOR YOU.





THE REGIONAL CENTER CANNOT WRITE AN IPP ABOUT YOU WITHOUT YOU BEING AT THE MEETING.



THE REGIONAL CENTER MUST HAVE A PERSON AT YOUR IPP MEETING WHO CAN SAY YES OR NO TO YOUR REQUESTS FOR SERVICES. THIS MAY BE YOUR SERVICE COORDINATOR OR IT MAY BE A PERSON IN ADDITION TO YOUR SERVICE COORDINATOR. THIS MEANS THAT REGIONAL CENTERS CANNOT MAKE DECISIONS OUTSIDE YOUR IPP MEETING ABOUT THE SERVICES YOU NEED. THE DECISION MUST BE MADE IN YOUR IPP MEETING SO THAT YOU HAVE A CHANCE TO TALK WITH A PERSON WHO CAN SAY YES OR NO TO SERVICES YOU ASK FOR.



IF A PERSON WHO CAN AGREE TO YOUR REQUEST FOR A SERVICE IS NOT AT YOUR IPP MEETING, THE REGIONAL CENTER MUST SET UP ANOTHER MEETING WITHIN 15 DAYS THAT THE RIGHT PERSON WILL BE AT.



YOU AND THE REGIONAL CENTER PERSON MUST AGREE ON AND SIGN THE IPP BEFORE THE SERVICES CAN BE GIVEN. IF YOU ONLY AGREE TO PART OF YOUR IPP, YOU SHOULD ASK YOUR SERVICE COORDINATOR TO PREPARE A STATEMENT THAT SAYS SOMETHING LIKE: "I AGREE TO

THE PARTS OF MY IPP OF (DATE) NUMBERED (--,--,--, ETC), BUT NOT TO THE PART(S) NUMBERED (-- -). PLEASE START OR CONTINUE THE SERVICES I AGREE TO RIGHT AWAY." IF THE REGIONAL CENTER SAYS NO TO ANY OF YOUR REQUESTS, THE REGIONAL CENTER MUST SEND YOU A LETTER WITHIN 5 DAYS TELLING YOU WHY THEY ARE NOT GIVING YOU THE SERVICE YOU WANT AND TELLING YOU HOW TO FILE FOR A HEARING. (SEE PAGE 12 BELOW ON HOW TO FILE FOR AN APPEAL HEARING.)



THE LAW DOESN'T REQUIRE THAT YOU HAVE AN IPP MEETING MORE THAN ONE TIME EVERY THREE YEARS. BUT; IF YOU <u>WANT</u> TO HAVE ONE SOONER TO TALK ABOUT CHANGES IN YOUR LIFE; YOU CAN YOUR SERVICE COORDINATOR TO SET ONE UP.. THE MEETING MUST BE HELD WITHIN 30 DAYS OF YOUR REQUEST.



YOU CAN ASK TO HAVE A DIFFERENT SERVICE COORDINATOR.



YOU CAN ASK TO CHANGE PROGRAMS YOU ARE IN.

# WHAT SHOULD YOU DO TO GET READY FOR YOUR IPP MEETING?



BE POSITIVE. YOU ARE GOOD AT LOTS OF. THINGS AND HAVE GOOD IDEAS ABOUT WHAT YOU WANT FOR YOUR 'LIFE.

BEFORE THE MEETING, MAKE SURE YOU TAKE TIME TO THINK ABOUT THE DREAMS OR GOALS YOU HAVE FOR THE FUTURE AND THE HELP YOU NEED TO REACH YOUR GOALS.



BEFORE YOU GO TO <u>YOUR</u> MEETING, TALK TO PEOPLE YOU TRUST ABOUT WHAT YOU WANT TO SAY AT YOUR MEETING. PRACTICE BEING CLEAR ABOUT WHAT YOU WANT.



THERE IS A SPECIAL IPP MEETING PLANNER AT THE END OF THIS MANUAL TO HELP YOU PLAN FOR YOUR MEETING.

WRITE DOWN WHAT YOU WANT TO SAY ABOUT YOUR DREAMS AND THE SERVICES YOU WANT. IF YOU NEED HELP WRITING IT DOWN, ASK A FRIEND TO HELP YOU.



IF YOU HAVE TROUBLE WRITING OR MAY GET NERVOUS AND FORGET THINGS AT YOUR MEETING, YOU CAN ALSO MAKE A TAPE RECORDING OF THE THINGS YOU WANT AND BRING THE TAPE TO PLAY AT THE MEETING.

BEFORE THE MEETING, IF YOU WANT, YOU CAN ASK THE REGIONAL CENTER TO TEST YOU - TO LEARN THE THINGS YOU CAN DO AND THE THINGS YOU STILL NEED HELP WITH.

## WHAT SHOULD YOU DO AT YOUR IPP MEETING?



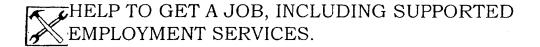
YOU CAN INVITE ANYONE TO <u>YOUR</u> IPP MEETING. IT'S <u>YOUR</u> MEETING SO IF YOU WANT FRIENDS, FAMILY MEMBERS OR AN ADVOCATE THERE TO SUPPORT YOU, ASK THEM TO COME.

IT IS IMPORTANT THAT YOU STRONGLY ASK FOR THE SERVICES YOU WANT - BUT DON'T GET MAD. IT IS ALWAYS BETTER TO TRY TO WORK TOGETHER. BUT, IT IS YOUR IPP AND YOU HAVE A RIGHT TO ASK FOR THE SERVICES YOU THINK YOU NEED. NOBODY ELSE CAN DO THAT AS WELL AS YOU CAN.

AT THE MEETING, GIVE YOUR SERVICE COORDINATOR THE WRITTEN LIST (OR THE TAPE) OF YOUR DREAMS AND THE SERVICES AND HELP YOU WANT FROM THE REGIONAL CENTER. WHAT YOU HAVE WRITTEN WILL HELP YOUR SERVICE COORDINATOR WRITE YOUR IPP.

## WHAT ARE SOME OF THE SERVICES AND HELP YOU CAN ASK TO HAVE IN YOUR IPP?

(At the very end of this booklet, there is a detailed list of services you may request in your IPP. This list is taken from the Lanterman Act, but the law does not limit you simply to the listed services — that is, you may ask for any other services that will help you be more independent or productive.)



HELP TO GET INTO A SCHOOL OR TRAINING PROGRAM.

TRANSPORTATION AND HELP TO LEARN HOW TO USE BUSES.

INSTRUCTION AND SUPPORT SO THAT YOU CAN LIVE IN YOUR OWN PLACE.

TRAINING IN HOW TO ADVOCATE FOR YOURSELF BETTER.

HELP TO GET INVOLVED IN FUN THINGS GOING ON IN THE COMMUNITY.

SOMEONE TO ASSIST YOU IF YOU WANT TO BE ON A COMMITTEE OR A MEMBER OF A BOARD OF DIRECTORS AND NEED HELP.

HELP TO GET EQUIPMENT LIKE WHEELCHAIRS OR COMPUTERS THAT TALK.

OTHER SERVICES YOU NEED TO LIVE A BETTER

# WHAT DO YOU DO IF THE REGIONAL CENTER SAYS "NO" TO WHAT YOU WANT OR MAKES A CHANGE IN YOUR SERVICES THAT YOU DON'T LIKE?

IF YOU ARE UNHAPPY ABOUT A
DECISION THE REGIONAL CENTER HAS
MADE ABOUT SERVICES YOU WANT, YOU
HAVE A RIGHT TO APPEAL THE
REGIONAL CENTER'S DECISION.

YOU SHOULD GET PEOPLE TO HELP YOU WITH ALL THE THINGS INVOLVED WITH THE APPEAL. IT'S NOT. EASY BUT IT IS YOUR RIGHT TO TRY TO CHANGE THE REGIONAL CENTER'S DECISION. IT'S IN THE LAW



WITHIN 5 DAYS OF MAKING ITS DECISION, THE REGIONAL CENTER MUST SEND YOU A WRITTEN LETTER ABOUT ANYTHING THEY ARE CHANGING IN YOUR IPP SERVICES AND TELL YOU WHY.

IF YOU DON'T UNDERSTAND THE LETTER, GET A FRIEND OR ADVOCATE TO HELP YOU.



THE REGIONAL CENTER IS SUPPOSED TO TELL YOU HOW TO APPEAL IN THE LETTER. IF THEY DON'T, YOU WILL HAVE TO ASK THEM. THEN YOU HAVE TO FILL OUT A FORM AS SOON AS YOU CAN AND SEND IT BACK.



IF YOU SEND IN A REQUEST FOR APPEAL WITHIN 10 DAYS OF THE REGIONAL CENTER'S DECISION,. THE REGIONAL CENTER CANNOT STOP GIVING YOU A SERVICE WHILE THE APPEAL IS GOING ON. THAT IS

THE LAW.

AFTER YOU SEND IN THE APPEAL FORM, A MEETING WILL BE SCHEDULED SO YOU CAN AGAIN TELL THE REGIONAL CENTER WHAT YOU WANT AND WHY YOU DON'T LIKE WHAT THEY DECIDED.



AFTER THIS MEETING, IF THE REGIONAL CENTER STILL DOESN'T AGREE TO WHAT YOU THINK SHOULD BE IN YOUR IPP, YOU CAN ASK FOR A FAIR HEARING. AT A FAIR HEARING, YOU WILL HAVE A CHANCE TO PUT YOUR CASE BEFORE A HEARING OFFICER FROM THE STATE. THE HEARING OFFICER WILL DECIDE IF YOU GET THE SERVICE.

REMEMBER, ALL THIS IS COMPLICATED AND EVERYONE SHOULD GET HELP WITH AN APPEAL. TALK WITH YOUR AREA BOARD OR PROTECTION AND ADVOCACY (TELEPHONE 1-800-776-5746) OR PEOPLE FIRST FOR HELP.



# WHAT ARE YOUR RIGHTS IF YOU LIVE IN A BOARD AND CARE HOME?

BOARD & CARE HOMES MUST LET YOU MAKE DECISIONS IN YOUR DAY-TO-DAY LIFE, LIKE:



WHEN YOU GO TO BED



WHEN YOU EAT



WHETHER YOU WANT TO HAVE FRIENDS OVER, AND



WHAT YOU DO IN YOUR FREE TIME.

IF YOU LIVE IN A BOARD & CARE HOME YOU ALSO HAVE A RIGHT TO:



WEAR YOUR OWN CLOTHES



HAVE YOUR OWN THINGS & USE THEM



KEEP & SPEND A REASONABLE AMOUNT OF YOUR OWN MONEY





HAVE A PLACE TO KEEP YOUR OWN THINGS



TALK ON THE PHONE



MAIL AND RECEIVE UNOPENED LETTERS, AND HAVE LETTER WRITING MATERIALS INCLUDING STAMPS.

RIGHTS CAN BE TAKEN AWAY ONLY IF YOU WOULD HURT YOURSELF, ANOTHER PERSON OR THE HOME. RIGHTS CANNOT BE TAKEN AWAY TO PUNISH YOU.



IF A RIGHT HAS BEEN TAKEN AWAY, IT MUST BE . REVIEWED EVERY 30 DAYS.



YOU CAN APPEAL THE FACT THAT A RIGHT HAS BEEN TAKEN AWAY.



YOU START BY CALLING THE REGIONAL CENTER'S CLIENTS' RIGHTS ADVOCATE.



YOU CAN ALSO CALL THE AREA BOARD, PROTECTION & ADVOCACY (1-800-776-5746) OR PEOPLE FIRST FOR HELP.

#### IPP MEETING PLANNER

THIS WORK SHEET IS TO HELP YOU PLAN FOR THE SERVICES YOU WANT TO ASK FOR FROM THE REGIONAL CENTER. USE IT TO HELP YOU THINK ABOUT THE SERVICES YOU NEED TO HELP YOU DO ALL OF THE THINGS YOU WANT TO DO.

#### A PLACE TO LIVE

#### WHERE DO YOU LIVE NOW?

LIMY OWN PLACE	☐ A GROUP HOME
☐ MY OWN PLACE WITH	☐ A LARGE CARE FACILITY
ROOMMATES	□ OTHER_
☐ MY PARENT'S PLACE	
WHERE DO YOU WANT TO	LIVE?
□ STAY WHERE I AM	☐ MY PARENT'S PLACE
☐ MY OWN PLACE	☐ A GROUP HOME
☐ MY OWN PLACE WITH	☐ A LARGE CARE FACILITY
ROOMMATES	OTHER
WHAT SERVICES DO YOU N	NEED TO HELP YOU LIVE WHERE
YOU WANT?	
☐ MORE TRAINING	☐ MORE MONEY
☐ AN ATTENDANT	☐ HELP FINDING A PLACE TO
☐ SOMEONE TO GIVE ME REGU-	LIVE
LAR SUPPORT AND HELP	☐ OTHER

#### A PLACE TO WORK

☐ COUNSELING

#### WHERE DO YOU WORK NOW?

☐ IN THE COMMUNITY WITHOUT EXTRA HELP
☐ IN THE COMMUNITY WITH A TRAINER OR AID
☐ IN A WORKSHOP OR CENTER
□ I GO TO SCHOOL
□ I DON'T WORK OR GO TO SCHOOL
□ OTHER
WHERE DO YOU WANT TO WORK?
☐ IN THE COMMUNITY
☐ IN A WORKSHOP OR CENTER
☐ I WANT TO GO TO SCHOOL
☐ I DON'T WANT TO WORK
□ OTHER
WHAT SERVICES DO YOU NEED TO HELP YOU WORK
☐ A TRAINER OR AIDE AT THE JOB
☐ TRAINING IN A WORKSHOP
☐ OTHER TRAINING
☐ MORE EDUCATION
☐ ACCESS TO WORK PLACE — RAMPS, ETC.
□TRANSPORTATION
OTHER
WHAT TYPE OF MEDICAL CARE DO YOU NEED?
□ DOCTOR SERVICES
☐ DENTIST SERVICES

#### FUN AND LEISURE

#### WHAT DO YOU DO FOR FUN OR WITH YOUR FREE TIME?

☐ VISIT FRIENDS ☐ SHOP ☐ GO TO MOVIES OR PLAYS ☐ PLAY SPORTS ☐ HOBBY ☐ WATCH TV	☐ READ ☐ TAKE CLASSES ☐ VOLUNTEER WORK ☐ LISTEN TO MUSIC ☐ DATING ☐ OTHER
WHAT NEW THINGS DO YOU	J WANT TO DO?
☐ VISIT FRIENDS	□ READ
□ SHOP	☐ TAKE CLASSES
☐ GO TO MOVIES OR PLAYS	□ VOLUNTEER WORK
□ PLAY SPORTS	☐ LISTEN TO MUSIC
□HOBBY	□ DATING
□ WATCH TV	O'THER
WHAT SERVICES DO YOU NEI THINGS YOU WANT TO DO?	ED TO HELP YOU DO THE
☐ TRAINING	
☐ ATTENDANT	
☐ FACILITATOR	
☐ TRANSPORTATION	
☐ SET UP A CIRCLE OF FRIENDS	•
LI OLITED	

#### **OTHER THINGS**

#### WHAT OTHER THINGS DO YOU THINK YOU NEED HELP WITH?

☐ COOKING FOR MYSELF	
☐ SHOPPING FOR THINGS I NEED	
☐ PERSONAL CARE (FOR EXAMPLE, IHSS)	
☐ CLEANING MY PLACE	
☐ MANAGING MY MONEY	
☐ GETTING MEDICAL CARE	
☐ MEETING MORE PEOPLE/MAKING FRIENDS	
☐ RIDING THE BUS OR OTHER TRANSPORTATION	
☐ LEARNING ABOUT PERSONAL RELATIONSHIPS	
☐ LEARNING ABOUT SEXUAL RELATIONSHIPS AND SAFE SEX	
☐ SELF ADVOCACY AND KNOWING MY LEGAL RIGHTS	
☐ PROBLEMS WITH SOCIAL SECURITY, SSI OR OTHER MONEY	
ASSISTANCE PROGRAMS	
□ OTHER	
WHAT OTHER SERVICES DO YOU NEED TO HELP WITH	
THESE THINGS?	
☐ TRAINING (WHAT TYPE?	_)
☐ AN ATTENDANT	
☐ A CHORE WORKER	
☐ JUST SOMEONE TO ASK QUESTIONS TO	
☐ HELP SETTING UP A CIRCLE OF FRIENDS	
☐ AN ADVOCATE OR LAWYER	
☐ A SERVICE COORDINATOR TO HELP ME PLAN FOR AND GET	
SERVICES I NEED	
EL OTTIED.	

#### What Should You Do If You Think You Qualify For An Exemption

If you think you qualify for an exemption, you should contact your service coordinator and request an IPP meeting. An IPP meeting must be held within 30 days of your request.<sup>2</sup> At the meeting, the IPP team must discuss the exemption criteria and whether the exemption applies to you.

For example, if you need camping services, and you think you qualify for the exemption, at the IPP meeting you should discuss how camping is a primary or critical means for ameliorating your developmental disability or why camping is necessary in order for you to remain in your home and that there are no other alternative services that can meet your needs. If you and the regional center do not agree as to whether you qualify for an exemption, regional center will provide you with a notice. If you disagree, you can request a hearing. Follow the procedures outlined below.

#### What Will Happen If the Regional Center Wants to Change Your Services?

If your regional center wants to change your services, it must either hold an IPP meeting and reach agreement with you about the change or give you a written notice.<sup>3</sup> The notice must be given 30 days before the change begins.<sup>4</sup> The notice must give you the following information:

- · the action the regional center is taking;
- the basic facts about why the regional center is making its decision;
- the reason for the action;
- the effective date; and
- the specific law, regulation or policy that supports the action.<sup>5</sup>

If you are already receiving the service and you disagree with the regional center's decision and want to continue to receive it, you must request a fair hearing within 10 days of receiving the notice. Otherwise, the request

Welfare & Institutions Code Section 4646.5(b)

<sup>&</sup>lt;sup>3</sup> Usually, decisions about the services you need must be decided by an IPP team. Welfare & Institutions Code Section 4646.4(a)-(c). However, the law says if a regional center wants to reduce, end or change a service in your IPP without your consent, it has to give you a 30 day notice first. Welfare & Institutions Code Section 4710.

<sup>&</sup>lt;sup>4</sup> Welfare & Institutions Code Section 4710

<sup>&</sup>lt;sup>5</sup> Welfare & Institutions Code Section 4701. Thunderstand.

<sup>&</sup>lt;sup>6</sup> Welfare & Institutions Code Section 4715

must be made within 30 days.<sup>7</sup> If you think you meet an exemption, remember to additionally put "I meet an exemption" into your fair hearing request.

For more important information on how to appeal decisions by the regional center, read our fact sheet, Due Process and Hearing Rights.

<sup>&</sup>lt;sup>7</sup> Welfare & Institutions Code Section 4710.5 (a)

#### Alta California Regional Center

#### **EXEMPTION CRITERIA**

(Suspended Services - Welfare & Institutions Code section 4648.5)

"(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subsection (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs."

#### A. Definitions: (Taken from Webster's Dictionary)

Extraordinary - going beyond what is usual, regular or customary

Primary – of first rank, importance or value

Critical - indispensable, vital

Ameliorate - to make better or more tolerable

#### **B.** Criteria for Exemption:

- 1. What is the extraordinary circumstance in the consumer's life?
  - a. In what way is this unusual, or not regular or customary for the consumer?
- 2. Is the service the most effective or most valuable for making the effects of consumer's developmental disability better or more tolerable? [primary]
  - a. What is the consumer's disability?
  - b. What are the consumer's needs, i.e., what are the effects of the disability that the service is trying to make better or more tolerable?
  - c. Are the needs directly related to the disability?
  - d. What other services is the consumer receiving
    - i. From ACRC
    - ii. From other sources
  - e. Are there any other services available which could provide the same benefits?

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- 3. Is this service necessary or indispensable to making the effects of the disability more tolerable and less impactful on the consumer and his/her family? [critical]
  - a. Will the effects of the consumer's disability fail to improve or fail to be made better without this service?
  - b. Is this service must be central or a linchpin to all other services the consumer receives?
  - c. Are there any other services available which could provide the same benefits?
- 4. Will the absence of this service threaten the ability of the consumer to remain in his/her home?
  - a. How/why will the absence of this service make it difficult for the consumer to remain in his/her home?
  - b. Are any other services available to meet the consumer's need so that he/she may remain in his/her home?

#### DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, ROOM 320, MS 3-9 SACRAMENTO, CA 95814 TDD 654-2054 (For the Hearing Impaired) (916) 654-1958



DATE:

JULY 29, 2009

TO:

REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS

SUBJECT: TRAILER BILL LANGUAGE AFFECTING REGIONAL CENTERS

The purpose of this correspondence is to transmit a summary of the Fiscal Year (FY) 2009-10 Trailer Bill language (ABX4 9, Chapter 9, Statutes of 2009) that directly affects regional centers or the developmental services system. Trailer Bill language (TBL) was enacted on July 28, 2009. TBL contains an urgency clause, and is therefore effective immediately. For any required modification to a consumer's Individualized Family Service Plan (IFSP) or Individual Program Plan (IPP), as a result of TBL, the regional center must provide the appropriate notification pursuant to Government Code section 95007 or Welfare and Institutions Code section 4700 et. seq. Regional centers should continue to educate their communities regarding these legislative changes. The Department of Developmental Services (DDS) has posted a summary of the budget reductions on its internet home page at www.dds.ca.gov.

While this correspondence provides a high level summary of the TBL, a complete and thorough review of the TBL (see <a href="www.leginfo.ca.gov">www.leginfo.ca.gov</a>) is imperative for regional centers' statutory compliance.

#### **General Standards**

#### **Purchase of Experimental Treatments**

TBL Section 10: Welfare and Institutions Code section 4648(a)(15) was amended to prohibit regional centers from purchasing experimental treatments, therapeutic services or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice.

Implementation: For new IFSPs and IPPs, this provision is effective upon the enactment of TBL, which occurred on July 28, 2009. For existing IFSPs/IPPs regional centers must immediately provide 30-day notice to discontinue funding after enactment of TBL.

"Building Partnerships, Supporting Choices"

Regional Center Directors and Board Presidents July 29, 2009 Page two

#### **Maximizing Generic Resources**

TBL Section 15: Welfare and Institutions Code section 4659(c) was amended to prohibit regional centers from purchasing any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Supportive Services (IHSS), California Children's Services, private insurance or a health care service plan if a consumer or a family meets the criteria to receive the service but chooses not to pursue that coverage.

Implementation: For new IFSPs and IPPs, this provision is effective upon the enactment of TBL, which occurred on July 28, 2009. For existing IFSPs/IPPs requiring modification, this provision will be effective October 1, 2009. Regional centers should immediately begin working with consumers/families impacted on October 1, 2009 by this section to begin the application process with these entities.

Documentation of Denial by Generic Resource for Medical/Dental Services TBL Section 15: Welfare and Institutions Code section 4659(d) was amended to prohibit regional centers from purchasing medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or health care service plan's denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit. The law allows regional centers to pay for medical or dental services while coverage is being pursued, but before a denial is made; pending a final administrative decision on the administrative appeal if the family has provided to the regional center a verification that an administrative appeal is being pursued; or until commencement of services by Medi-Cal, private insurance, or a health care service plan.

*Implementation:* For new IPPs, this provision is effective upon the enactment of TBL, which occurred on July 28, 2009. For existing IPPs regional centers must immediately provide 30-day notice to allow for implementation after enactment of TBL.

#### **Least Costly Vendor**

TBL Section 10: Welfare and Institutions Code section 4648(a)(6)(D) was amended to require the IPP planning team to review the cost of providing services or supports of comparable quality by different providers and to choose the least costly available provider, including transportation, who is able to accomplish all or part of the consumer's IPP, consistent with the particular needs of the consumer and family as identified in the IPP. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer is not required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

Regional Center Directors and Board Presidents July 29, 2009 Page three

*Implementation:* This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009, and implemented at the time of development, review, or modification of the IFSP or IPP.

#### **Annual Statement of Services**

TBL Section 10: Section 4648(h) was added to the Welfare and Institutions Code, to require regional centers to provide, at least annually, each consumer, his or her parents, legal guardian, conservator, or authorized representative a statement of services and supports the regional center purchased for the purpose of ensuring that they are delivered. The statement must include the type, unit, month, and cost of services and supports purchased.

*Implementation:* This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009.

#### **Early Start-Specific Provisions**

#### **Early Start-Use Private Insurance**

TBL Section 1: Government Code section 95004 was amended to require families to use their private insurance or health care service plan for medical services identified in the IFSP, other than for evaluation and assessment, in compliance with applicable federal and state law and regulation. Regional centers must continue to ensure the timely provision of required early intervention services.

*Implementation:* This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009, and implemented at the time of development, review, or modification of the IFSP.

#### Early Start-Eligibility Criteria, Provision of Required Services

TBL Section 2: Government Code section 95014(a)(1) was amended to define, for Early Start, infant and toddler eligibility requirements for the developmental delay category. Previously, eligibility due to a developmental delay required a "significant difference" between the expected level of development for an individual's age and the current level of functioning. That significant difference was measured as a 33 percent delay in one of five domains. TBL now defines eligibility due to a developmental delay as a 33 percent delay in one developmental area before 24 months of age, or, at 24 months of age or older, either a delay of 50 percent in one developmental area or a 33 percent delay in two or more developmental areas. The age for use in the determination of eligibility due to a developmental delay for Early Start shall be the age of the infant or toddler on the date of the initial referral to the Early Start program.

Regional Center Directors and Board Presidents July 29, 2009 Page four

Implementation: This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009. This change in eligibility is prospective; therefore currently eligible infants/toddlers remain eligible for Early Start services. Toddlers not eligible for Early Start services, as a result of these changes, may be eligible for the new Prevention Program once established. (See Prevention Program below.)

The amendments also alter the Early Start program eligibility requirements such that infants and toddlers who are at high risk of having a substantial disability due to a combination of biomedical risk factors do not qualify for Early Start program services.

Implementation: Effective October 1, 2009, there will be no Early Start Program Services for infants/toddlers who were previously receiving, or might have in the future received such services due to being "at risk" of having a substantial developmental disability due to a combination of biomedical risk factors. For infants/toddlers who are currently receiving services due to being "at risk", regional centers must provide 30-day notice that their services will end on September 30, 2009. As the TBL redefines eligibility for the Early Start program, "at risk" infants/toddlers impacted by this change have no right to a fair hearing seeking continued eligibility due to 'at risk' factors. However, parents could request a fair hearing if they believe their children meet the eligibility requirements for regional center services due to a developmental delay or an established risk condition. Services for "at risk" infants and toddlers impacted by the changes to Government Code section 95014(a)(1) above may be available through the new Prevention Program as described below. Regional centers should notify impacted families of these changes in services.

The amendments also specify that regional centers are responsible only for the provision of services that are required for California's participation in Part C of the federal Individuals with Disabilities Education Act. Required services are those early intervention services that are designed to meet the unique developmental needs of the child and the needs of the family related to enhancing the child's development. Local education agencies remain responsible for early intervention services provided to infants/toddlers with a solely low incidence condition (blind, deaf, or orthopedically handicapped).

Required Early Intervention Services and Eliminating Nonrequired Services TBL Section 3: Government Code Section 95020 was amended to prohibit regional centers from purchasing nonrequired services in Early Start, with the exception of durable medical equipment, but provides the option for referring families to other nonrequired services where available.

Regional Center Directors and Board Presidents July 29, 2009 Page five

Implementation: While the statute calls for implementation on July 1, 2009; federal statute requires DDS to submit an amendment to the current Early Start state plan application prior to implementation of these changes. Regional centers should not implement this portion of the statute until October 1, 2009. This amendment is currently posted on the Department's internet home page for public comment. Beginning October 1, 2009, regional centers should not include nonrequired services on an infant or toddler's IFSP. For infants and toddlers whose current IFSP includes a nonrequired service, the regional center must provide 30 days notice of cessation of service. While some parents may contend at fair hearing that the nonrequired service is necessary the statute does not provide regional centers with authority to provide nonrequired services, with the exception of durable medical equipment. Current law stipulates, "The granting or denial of nonrequired services by a public or private agency is not subject to appeal under this title." [Government Code section 95020(e)(3)]

#### **Prevention Program**

TBL Section 6: Section 4435 was added to the Welfare and Institutions Code to require DDS to establish a Prevention Program for at-risk babies. "At-risk baby," means a child under 36 months of age who is otherwise not eligible for the California Early Intervention Program and whose genetic, medical, developmental, or environmental history is predictive of a substantially greater risk for developmental disability than that for the general population. The program is to provide intake, assessment, case management, and referral to generic agencies. Subject to appropriation, DDS will allocate specific funding for the program to each regional center. DDS will establish policies and procedures for implementation of the program.

*Implementation:* Effective October 1, 2009. DDS has convened a stakeholder meeting to gain input on the structure of the Prevention Program, and is continuing to work with the Association of Regional Center Agencies and other stakeholders on implementation of the Prevention Program.

#### Other Consumer and Family Service Related Provisions

#### Group Training for Parents on Behavioral Intervention Techniques and Utilization of Neighborhood Preschools

TBL Sections 3 and 17: Government Code section 95020 and Welfare and Institutions Code section 4685 were amended to require consideration of the following: the use of group training for parents for behavior intervention techniques, in lieu of some or all of the in-home parent training component of the behavior intervention services, and the purchase of neighborhood preschool services and needed qualified personnel, in lieu of infant development programs.

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*Implementation:* This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009, and implemented at the time of development, review, or modification of the IFSP or IPP.

#### **Behavioral Services Standards**

TBL Sections 4 and 19: Section 95021 was added to the Government Code and Section 4686.2 was added to the Welfare and Institutions Code to specify the responsibilities of vendors who provide ABA or intensive behavioral intervention services or both, responsibilities of regional centers prior to purchasing these services, and the requirement that the parent(s) of minors participate in the intervention plan. Regional centers may not purchase ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services.

Implementation: The requirements for vendors are effective immediately upon enactment of TBL, which occurred on July 28, 2009. For new IFSPs and IPPs, this provision is also effective upon the enactment of TBL. For existing IFSPs/IPPs regional centers must immediately provide 30-day notice to allow for implementation after enactment of TBL.

#### Large Facilities

TBL Section 10: Welfare and Institutions Code section 4648(a)(3)(E) was amended to prohibit regional centers from newly vendorizing a State Department of Social Services licensed 24-hour residential care facility with a licensed capacity of 16 or more beds, unless the facility qualifies for receipt of federal funds under the Medicaid program. This provision is effective July 1, 2009. Welfare and Institutions Code section (a)(9)(B) was also amended to state that effective July 1, 2012, a regional center shall not purchase residential services from a State Department of Social Services licensed 24-hour residential care facility with a licensed capacity of 16 or more beds, with two exceptions: the residential facility has been approved to participate in the Home and Community-Based Services Waiver or another existing waiver program or is certified to participate in the Medi-Cal program; or the service provider has a written agreement and specific plan prior to July 1, 2012, with the vendoring regional center to downsize the existing facility by transitioning its residential services to living arrangements of 15 beds or less or restructure the large facility to meet federal Medicaid eligibility requirements on or before June 30, 2013.

Implementation: This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009. There is no expectation or requirement for devendorization of large facilities vendorized between July 1, 2009, and the enactment of TBL. Funds continue to be available to regional centers to assist with downsizing

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large CCFs, as needed, to bring them into compliance with Home and Community-Based Services Waiver requirements and/or other federal financial participation (FFP) eligible programs. To be considered for downsizing funds, the regional center must meet with the residential service provider to develop an acceptable plan for making the program eligible for FFP and provide the plan, via a signed written contract, to DDS. The contract must include the amount of funds needed per fiscal year and specifically what will be accomplished with the funds during that fiscal year. DDS will consider allocating downsizing funds on a first come first serve basis.

#### **Transportation Reform**

TBL Section 12: Section 4648.35 was added to the Welfare and Institutions Code stating that regional centers will not fund private specialized transportation services for an adult consumer who can safely access and utilize public transportation when that transportation is available, and will purchase the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IFSP or IPP. In addition, a regional center may only fund transportation from the consumer's residence to the lowest-cost vendor that provides the service that meets the consumer's needs, as set forth in the consumer's IFSP or IPP, and may only fund transportation for a minor child living in the family residence if the family provides sufficient written documentation to demonstrate that it is unable to provide transportation for the child.

*Implementation:* This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009, and implemented at the time of development, review, or modification of the IFSP or IPP.

#### **Temporarily Suspend Services**

TBL section 13: Section 4648.5 was added to the Welfare and Institutions Code suspending the purchase of camping services and associated travel expenses; social recreation activities, except for those activities vendored as community-based day programs; educational services for children ages three to 17; and non-medical therapies, including, but not limited to, specialized recreation, art, dance, and music pending implementation and certification of the Individual Choice Budget (see below). The regional center may grant an exemption on an individual basis in extraordinary circumstances to permit the purchase of a service identified above when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's need.

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This suspension is lifted upon certification of the Director of DDS that the Individual Choice Budget has been implemented and will result in State budget savings sufficient to offset the costs of providing the suspended services. (See Individual Choice Budget Section below.)

*Implementation:* For new IFSPs and IPPs, this provision is effective upon the enactment of TBL, which occurred on July 28, 2009. For existing IFSPs/IPPs regional centers must immediately provide 30-day notice to discontinue funding after enactment of TBL.

#### **Individual Choice Budget**

TBL Section 14: Section 4648.6 was added to the Welfare and Institutions Code requiring DDS, in consultation with stakeholders, to develop an alternative service delivery model that provides an Individual Choice Budget for obtaining quality services and supports which provides choice and flexibility within a finite budget that in the aggregate reduces regional center purchase of service expenditures, reduces reliance on the state general fund, and maximizes federal financial participation. The individual budget will be determined using a fair, equitable, transparent standardized process.

Implementation: DDS will convene a stakeholder meeting.

#### **Expansion of In-Home Respite Agency Worker Duties**

TBL Section 18: Welfare and Institutions Code section 4686 was amended to include the provision of specified incidental medical services that may be provided by an inhome respite agency worker who is not a licensed health care professional but who is trained by a licensed health care professional. These services may only occur for consumers with stable conditions, and after successful completion of the required training. The consumer's treating physician or surgeon must give assurances to the regional center that the patient's condition is stable prior to the regional center's purchasing incidental medical services for the consumer through an appropriately trained respite worker. Incidental medical services are defined as: colostomy and ileostomy: changing bags and cleaning stoma; urinary catheter: emptying and changing bags and care of the catheter site; and gastrostomy: feeding, hydration, cleaning stoma, and adding medication per physician's or nurse practitioner's orders for the routine medication of patients with stable conditions. The training in incidental medical services shall be provided by physicians or registered nurses. The in-home respite agency providing the training shall develop a training protocol which shall be submitted to DDS. The amendments provide for a fifty cent (\$.50) per hour wage increase and an eightcent (\$.08) per hour benefit increase for the hours the in-home respite agency is providing incidental medical services. In addition, a regional center may now reimburse

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the in-home respite agency up to two hundred dollars (\$200) semiannually, for the provision of training in these services.

Implementation: This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009. Also, DDS will send a letter to all in-home respite agencies (and copy regional centers) informing them of these provisions and the need to submit training protocols to DDS for approval. DDS' response to the respite agency's training protocols will be sent to the respite agency, and copied to the vendoring regional center. Upon receipt of documentation from the in-home respite agency that training was provided pursuant to this section, regional centers will be responsible for reimbursing the respite agency up to \$200. When authorizing respite services that include incidental medical services, the authorization will need to reflect the \$.58/hour increase for only those hours where these additional duties are performed.

#### **Respite Program-Temporary Service Standards**

TBL Section 20: Section 4686.5 was added to the Welfare and Institutions Code to specify the conditions under which a regional center may purchase respite services and that a regional center may not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite in a quarter, for a consumer. The regional center may grant an exemption from the respite limits if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

The amendments also prohibit a regional center from purchasing day care services to replace or supplant respite services. "Day care" is defined as regularly provided care, protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours per day, while the parents are engaged in employment outside of the home or educational activities leading to employment, or both. The amendments also stipulate that a regional center may only consider IHSS a generic resource when the approved IHSS hours meet the respite needs as identified in the IFSP/IPP.

These provisions shall remain in effect until implementation of the Individual Choice Budget.

Implementation: For new IFSPs and IPPs, this provision is effective upon the enactment of TBL, which occurred on July 28, 2009. For existing IFSPs/IPPs regional

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centers must immediately provide 30-day notice to allow for implementation after enactment of TBL.

#### New Service for Seniors at Reduced Rates

TBL Section 21: Section 4688.1 was added to the Welfare and Institutions Code to require, effective July 1, 2009, vendors of behavior management, activity center, and adult development center day programs, social recreation programs, socialization training programs, community integration training programs, community activities support programs, creative art programs, and work activity programs to offer an alternative senior (over 50 years of age) program component at a ratio of no more than one staff to 8 consumers. The rate is not to exceed the lesser of thirty-five dollars (\$35) per day or the vendor's existing daily rate. Vendors of the service types listed above must offer the above component within the provider's existing vendored capacity as reflected in its program design or licensed capacity.

Implementation: This provision is effective upon enactment of TBL, which occurred on July 28, 2009. At the time of development, review, or modification of the IPP, regional centers must provide information about these services, as appropriate. The alternative senior program should be offered to eligible consumers who want to transition to a program component focused on the needs and interests of seniors. Implementation of the TBL is not to result in an expansion of the vendor's program capacity. Provision of this new senior component requires no new vendorization by the regional center. DDS will send a letter to community-based day program and work activity program providers (and copy regional centers) notifying them of these statutory changes.

#### **Custom Endeavors Options (CEO)**

TBL Section 22: Section 4688.2 was added to the Welfare and Institutions Code to require, effective July 1, 2009, vendors of behavior management, activity center, and adult development center adult day programs, community integration training programs, and community activities support services programs to offer an alternative customized program component with an appropriate staffing component to meet individualized consumer needs. The program is to be offered within the service provider's vendored capacity, as reflected in its program design or licensed capacity. The regional center shall fund customized programs based on the vendor's existing rate and only fund those hours provided. The alternative customized program is to focus on a consumer's individualized needs and interests to develop or maintain employment or volunteer activities in lieu of their current program, and is to range between 20 and 80 hours per month for each participant.

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Implementation: This provision is effective upon enactment of TBL, which occurred on July 28, 2009. At the time of development, review, or modification of the IPP, regional centers must provide information about these services, as appropriate. The alternative customized program should be offered to eligible consumers who want to transition to a program component focused on their individualized needs and interests to develop or maintain employment or volunteer activities in lieu of their current program. Implementation of the TBL is not to result in an expansion of the vendor's program capacity. Provision of this new alternative customized component requires no new vendorization by the regional center. DDS will send a letter to community-based day program providers (and copy regional centers) notifying them of these statutory changes.

#### **Supported Living Services (SLS)**

TBL Section 24: Welfare and Institutions Code section 4689 was amended to require that the planning team of a consumer receiving SLS confirm that all appropriate and available sources of natural and generic supports have been utilized to the fullest extent possible; that regional centers utilize the same SLS provider for consumers residing in the same domicile, provided that each consumer's particular needs can still be met pursuant to his or her IPP; and that the consumer, and any roommate, make all rent, mortgage, or lease payments and be responsible for household expenses.

The law also specifies the conditions under which a regional center may make rent, lease or mortgage payments or assist with household expenses for a consumer in SLS not to exceed six months, with certain exceptions. To do so, the regional center executive director must verify in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's IPP; and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another. In addition, during the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the SLS vendor must assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer. The regional center shall not make rent, mortgage, or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's IPP. The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's IPP that the requirements noted above continue to be met.

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*Implementation:* These provisions are effective immediately upon the enactment of TBL, which occurred on July 28, 2009, and implemented at the time of development, review, or modification of the IFSP or IPP.

A regional center that has been contributing to rent, mortgage, or lease payments or paying for household expenses shall at the time of development, review, or modification of a consumer's IPP determine if specific conditions are met. If the planning team determines that these contributions are no longer appropriate, a reasonable time for transition, not to exceed six months, shall be permitted. All paid roommates and live-in support staff are responsible for their share of the rent, mortgage, or lease payments, and household expenses. "Household expenses" are defined as general living expenses and includes, but is not limited to, utilities paid and food consumed within the home.

The amendments also require that regional centers ensure SLS vendor's administrative costs (as defined in section 57434 of Title 17) are necessary and reasonable, and that the most cost-effective of the rate methodologies is utilized to determine the negotiated rate for SLS vendors. SLS vendors are required to provide assistance to a consumer who is a Medi-cal beneficiary in applying for In-Home Supportive Services within five days of the consumer moving into an SLS arrangement.

*Implementation:* This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009. Regional centers must immediately review their contracts with vendored SLS providers to ensure compliance with these provisions.

## In-Home Supportive Services (IHSS)

TBL Section 25: Section 4689.05 was added to the Welfare and Institutions Code to prohibit regional centers from purchasing supportive services for a consumer who meets the criteria to receive, but declines to apply for, IHSS benefits, and from purchasing SLS to supplant IHSS. Between the date a consumer applies for IHSS and the date that a consumer's application for IHSS is approved, a regional center shall not purchase supportive services for the consumer at a rate that exceeds the IHSS hourly rate.

A regional center executive director may waive the requirement for a consumer to apply for IHSS if the executive director finds that extraordinary circumstances warrant the waiver, and that a finding is documented in an addendum to the consumer's IPP.

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*Implementation:* This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009. DDS will post county IHSS rates on its internet home page.

## **Uniform Holiday Schedule**

TBL Section 26: Section 4692 was added to the Welfare and Institutions Code to implement a 14-day uniform holiday schedule for work activity programs, activity centers, adult development centers, behavior management programs, social recreation programs, adaptive skills trainers, infant development programs, program support groups (day service), socialization training programs, client/parent support behavior intervention training programs, community integration training programs, community activities support services, and creative arts programs. This also includes transportation services. If a holiday falls on a Saturday or Sunday, the following Monday is to be deemed the holiday in lieu of the day observed. DDS may adjust the holiday schedule with sufficient notice through a program directive.

*Implementation*: Effective August 1, 2009. Until such time as the Director of DDS issues a program directive adjusting the uniform holidays, the schedule in statute remains in effect. DDS will post a survey on its internet home page to receive input and any recommended changes to the statewide uniform holiday schedule.

## Parental Fee Program

TBL Section 27: Welfare and Institutions Code section 4784 was amended to allow for an update to the parental fee schedule effective July 1, 2009. For children placed out-of-home prior to July 1, 2009, DDS is to determine the increase in parental fee above the amount assessed using the fee schedule in effect on June 30, 2009. The fee increase is to be implemented over three years, with one-third of the increase added to the fee on July 1, 2009, one-third on July 1, 2010, and the final third added to the fee on July 1, 2011. Some parents will no longer be required to pay a fee if their incomes are at or below the Federal Poverty Level, and some parents will have their fees reduced. The new parental fee schedule has been updated to reflect the cost of raising a child in California based upon the USDA's Report, "Expenditures on Children by Families" (A copy of the updated fee schedule as of July 1, 2009, is enclosed.)

Implementation: DDS will send a letter to all parents currently participating in the parental fee program notifying them of these changes (sample letter enclosed). Regional centers should continue to advise parents of the program and obtain appropriate and complete parental information at the time of intake. Regional centers should also destroy all current Parental Fee information packages that you have in stock. Do not destroy the envelopes provided in the previous packages as they can still

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be used for mailing. DDS will send you a new supply of information packages with updated information within a few days of enactment of the TBL, and will also email regional centers the new documents for copying. Regional centers have the responsibility to advise all parents who place their children, ages 0 through 17, in out-of-home placement that they may be liable for payment of the parental fee and are required to submit a Family Financial Statement to the Client Financial Services Section for assessment of their ability to pay within 30 days of the placement. This should be done as part of the IPP process, as appropriate. Regional center employees who work with parents should be trained about the Parental Fee Program and the requirement for parental responsibility under Welfare and Institutions Code section 4782. For parents' reference, DDS' internet home page will be updated with current Parental Fee information and FAQs. If you have any questions, please contact the Parental Fee Program Unit at 1-800-862-0007.

TBL Section 16: Welfare and Institutions Code section 4677 was amended to specify that parental fee schedules shall be adjusted annually, <u>as needed</u>, by DDS.

Implementation: No action is needed by regional centers.

## **System-Related Provisions**

## **Quality Assurance Consolidation**

TBL Sections 5, 7 and 9: Welfare and Institutions Code section 4418.1 was amended to discontinue the current "Mover's Study" effective July 1, 2009, and Life Quality Assessments effective January 1, 2010, and require DDS to implement an improved unified quality assessment system by January 1, 2010, pursuant to section 4571.

Sections 4570 and 4571 were added to the Welfare and Institutions Code, requiring DDS to implement an improved unified quality assessment system. DDS, in consultation with stakeholders, is to identify a valid and reliable quality assurance instrument that includes assessments of consumer and family satisfaction, provision of services, and personal outcomes. The instrument must meet specified criteria, and DDS must contract with the state council to collect data for the quality assurance instrument. The state council must notify the regional center if the information collected reveals any suspected violation of the legal, civil, or service rights of a consumer, or if it determines that the health and welfare of a consumer is at risk. DDS must, in consultation with stakeholders, annually review the data collected from and the findings of the quality assurance instrument described above and accept recommendations regarding additional or different criteria for the quality assurance instrument in order to

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assess the performance of the state's developmental services system and improve services for consumers.

Implementation: DDS has convened a stakeholder meeting and process. No action is required of regional centers on implementation of this provision.

## **Eliminate Triennial Quality Assurance Review**

TBL Section 11: Welfare and Institutions Code section 4648.1 was amended to repeal the requirement that regional centers perform triennial evaluations of community care facilities, as described in Sections 56046, 56049, 56050, 56051 and 56052 of Title 17 of the California Code of regulations.

*Implementation:* This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009.

## **State Plan Amendment**

TBL Section 23: Section 4688.3 was added to the Welfare and Institutions Code to require that the State Department of Health Care Services and DDS shall jointly seek a federal Centers for Medicare and Medicaid Services' 1915(i) state plan amendment to increase federal financial participation in the delivery of regional center services.

*Implementation:* This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009. DDS will keep regional centers informed as the State Plan Amendment progresses.

## Porterville Developmental Center (PDC) Maximum Occupancy

TBL Section 28: Welfare and Institutions Code section 7502.5 was amended to specify that the total number of developmental center residents in the secure treatment facility at PDC, including those residents receiving services in the PDC transition treatment program is not to exceed 297.

*Implementation:* This provision is effective immediately upon the enactment of TBL, which occurred on July 28, 2009.

TBL also requires DDS to report to the Legislature during budget hearings for FY 2010-11 regarding the effect on the developmental service system of the specific cost containment measures passed in 2009. DDS will be monitoring compliance with and implementation of these new provisions of law through data analysis and other mechanisms. For instance, DDS will monitor expenditures under service codes used for the purchase of non-medical therapies, camp, educational services and social

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recreation activities (e.g. service codes 693, 694, 106, 850, 680, 678, 015, 676, 678,107, 106, 072, 084). Likewise, in regional center's efforts to implement and comply with the TBL, application of the law can not be looked at solely through the use of service codes but must also take into consideration the purpose of the service being purchased by the regional center as reflected on the IFSP/IPP.

To assist consumers/families and regional center communities at-large in understanding the \$334 million reduction in the state budget for regional centers and the resulting changes to the service delivery system, enclosed is a letter for regional centers to attach to their Notice of Action letters to impacted consumers/families, if they so choose. This letter will provide background information, a high level summary of the TBL including information on exemptions, a reference to DDS' internet home page where they can find additional information, and the reminder that they can contact their service coordinator to discuss their needs further.

We realize that these are difficult and challenging times for all. We appreciate the work that you and your staff do and recognize that there is much regional centers will need to do to carry out the statutory changes to the Lanterman Act and Early Start Program.

Thank you for your cooperation and continued work on behalf of consumers and families.

Sincerely,

ORIGINAL SIGNED BY BRIAN WINFIELD FOR

RITA WALKER
Deputy Director
Community Operations Division

**Enclosures** 

cc: Robert Baldo, ARCA

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# DEPARTMENT OF DEVELOPMENTAL SERVICES SUMMARY OF BUDGET REDUCTIONS JULY 2009

The State of California is experiencing an unprecedented budget shortfall largely due to the severe national economic crisis. Every area of state government is impacted by this fiscal crisis, including the Department of Developmental Services (DDS or Department). The Department's 2009/10 budget includes reductions of \$334 million in General Fund, leaving \$4.7 billion in resources available for services to the over 240,000 individuals served by the Department.

The Department has undertaken numerous efforts to control costs throughout our entire system, including staffing reductions in the DDS headquarters and state-operated developmental centers, contract suspensions, furloughs of state employees with a corresponding 14.2 percent decrease in salary, and development of proposals to reduce regional center operations and purchase of services. DDS is also working to increase federal funds by increasing the number of individuals and services that will be eligible for federal matching dollars. Throughout this difficult process, the Department has remained committed to preserving the entitlement to services and supports; preserving the consumer due process (appeal) rights; and the continued implementation of the individualized planning process mandated in the Lanterman Developmental Disabilities Services Act (Lanterman Act) and Early Intervention Services Act (Early Start).

The Department implemented a stakeholder process to inform the development of the 25 proposals presented to the Legislature, at their request, which achieve the required level of reductions. Stakeholder input was received through three public forums and the establishment of a stakeholder workgroup to advise DDS. A summary of the changes may be found on DDS website <a href="https://www.dds.ca.gov">www.dds.ca.gov</a>.

Many of the reductions may affect services included in a consumer's current Individual Program Plan (IPP) or Individualized Family Services Plan (IFSP). Regional centers will provide these individuals and families with a 30 day notice of action regarding any changes to their services. Although some areas of reduction provide for consideration of extraordinary circumstances, these are very limited exceptions (see the DDS website for more details regarding exemptions). If consumers or families believe they are eligible for a limited exemption, they should contact their regional center case worker. If necessary, an IPP/IFSP meeting may be requested. During these difficult and challenging times it is important that we all work to achieve these savings while preserving the Lanterman Act and the entitlement that serves Californians with developmental disabilities.

#### State of California **DEPARTMENT OF DEVELOPMENTAL SERVICES**

Client Financial Services Section 1600 Ninth Street, Room 205, MS 2-3 Sacramento, CA 95814 (916) 654-3319 TDD 654-2054 (For the Hearing Impaired) Toll Free 800-862-0007



## PARENT'S FINANCIAL RESPONSIBILITY **MONTHLY PARENTAL FEE**

Parents of children under the age of 18 who receive 24-hour out-of-home services provided by the State or purchased with State funds through a regional center are required to pay a fee depending on their ability to pay. Ability to pay is determined by use of a Parental Fee Schedule, established by the Director of the State Department of Developmental Services (DDS), and by application of provisions in Subchapter 2, Title 17, of the California Administrative Code (CAC).

Statutory authority for financial responsibility is in Sections 4677, 4782, and 4784, of Division 4.5 of the Welfare and Institutions Code (WIC), otherwise known and cited as the Lanterman Developmental Disabilities Services Act.

WIC, Section 4677, establishes the Developmental Disabilities Program Developmental Fund, called the Program Development Fund (PDF). All parental fees collected are remitted to the State Treasury for deposit into the PDF. The purpose of the PDF is to provide resources needed to initiate new programs which are consistent with the State Plan. Any excess parental fees may be used for other lawful purposes only when specifically appropriated for such other purposes.

WIC, Section 4782, provides specific authority for parental financial responsibility, stating in part that "Parents of children under the age of 18 who are receiving 24-hour out-of-home care services through a regional center or who are residents in a state hospital . . . shall be required to pay a fee depending on their ability to pay, but not to exceed (1) the cost of caring for a normal child at home, as determined by the Director of DDS, or (2) the cost of services provided, whichever is less. DDS shall determine, assess, and collect all parental fees..."

WIC, Section 4784, provides that the Director of DDS establish, annually review, and adjust as needed, a schedule for parental fees; that such schedule is exempt from the provisions of the Administrative Procedures Act; and that in determining the amount parents will pay, the Director gives consideration to the following factors:

- 1. prior medical expenses;
- 2. whether the child is living at home:
- 3. parental payments for medical expenses (current), clothing, incidentals, and other items considered necessary to the normal rearing of a child; and,
- 4. transportation expenses incurred in visiting a child

The Parental Financial Responsibility Program is in Subchapter 2, Sections 50201 through 50241, Title 17 of the CAC. Among others, these regulations provide that parental fees shall be effective as of the first day of the month following the month that a client is placed in a 24-hour out-of-home facility; allow deductions from gross family income for specific client-related expenditures, major unusual expenditures; travel expenses to visit the client; and, set down program responsibilities for DDS and the regional centers.

#### The Department of Developmental Services shall:

- 1. determine, assess, bill, and collect all parental fees:
- 2. inform parents, in writing, of the parental fee determination results:
- 3. inform parents of their right to appeal the ability to pay determination and/or the amount of the fee;
- 4. handle all requests for parental fee appeals. notifying the appellant and the appropriate regional center of the appeal results; and,
- remit all parental fee payments received from parents or a regional center to the State Treasury for deposit into the PDF.

## Regional Centers shall:

- 1. inform parents that the parental fee determination is required by law; that parents having the ability will be required to pay, and that the Parental Fee Schedule is established by the Director of DDS:
- 2. provide parents with a package containing an Informational Letter, a Family Financial Statement (FFS), and a preaddressed, postage-paid envelope for their convenience in returning the completed FFS; and,
- 3. inform parents that their failure or refusal to complete and return the completed FFS within 30 days of the date on the Informational Letter will result in the Department's assessing a parental fee at the full cost of services or the maximum fee, whichever is less.

This Parantal Fee Schedule enables parents to estimate the amount of their monthly parental fee. The actual amount may be different from below depending on allowable deductions to annual income or family size changes.

Find your family size (the number of persons in household per tax filing status).

2. Find the age of your child receiving services.

3. Follow that row across the chart to your gross famity income to get monthly fee amount.



Effective JULY 1, 2009



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<sup>\*</sup> For family sizes of 5 or more with incomes over \$175,000, the parental fee is defermined via the same method as the fees shown on this page.

# APPEAL PROCESS

Parent(s) dissatisfied with the determination of ability to pay results or the amount of the parental fee may,

within 30 days from the date on the Fee Notification Letter, request an appeal. Such request must be in writing and addressed to:

DEPARTMENT OF DEVELOPMENTAL SERVICES 1600 Ninth Street, Room 205, MS 2-3 Client Financial Services Section Sacramento, CA 94244-2020

## **DEPARTMENT OF DEVELOPMENTAL SERVICES**

CLIENT FINANCIAL SERVICES SECTION 1600 NINTH STREET, Room 205, MS 2-3 P. O. BOX 944202 SACRAMENTO, CA 94244-2020 TDD 654-2054 (For the Hearing Impaired) Toll Free (800) 862-0007



## Dear Parents:

The State of California is experiencing an unprecedented budget shortfall largely due to the severe national economic crisis. Every area of state government is impacted by this fiscal crisis, including the Department of Developmental Services.

The California State Legislature passed legislation in 2009 amending the Parental Fee Program and approved changes to the Parental Fee Schedule. The Parental Fee Schedule has not been updated since 2003 when the maximum fee rate was last increased. The most significant changes to the Welfare and Institutions Code section 4782 are updating the parental fee schedule in accordance with the United States Department of Agriculture's "Expenditures on Children by Families" and specifying that parents with incomes at or below the Federal Poverty Level will not be liable to pay the parental fee. As a result of these changes, the parental fee will increase for many parents and for some parents the fee will be reduced or eliminated.

The California Welfare and Institutions Code section 4782 states, in part, "Parents of children under the age of 18 years who are receiving 24-hour out-of -home care services through a regional center or who are residents of a state hospital or on leave from the state hospital shall be required to pay a fee depending on their ability to pay, but not to exceed; (1) the cost of caring for a normal child at home as determined by the Director of Developmental Services, or (2) the cost of services provided, whichever is less." To coincide with the rising cost of providing services to children with developmental disabilities, the Director has approved a new parental fee schedule for parents who are required to pay under this parental responsibility program.

For the parents with minor children in 24-hour out-of-home placements prior to July 1, 2009, the fee increase will be phased in over a three year period. On July 1, 2009, the parental fee will be calculated based on the new fee schedule, but only one-third of the difference between the old fee as of June 30, 2009, and the new fee will be added to your current fee amount and any subsequent redeterminations. Similar adjustments will be made in 2010 and 2011, and all future determinations will be based on the fee schedule as defined by Title 17 section 50213.

"Building Partnerships, Supporting Choices"

**Parents** 

Page two

A copy of the new Parental Fee Schedule is enclosed. The August billing statement will reflect your new parental fee amount and include the adjusted amount due for July. Please call the Parental Fee Unit's toll free telephone number at 1-800-862-0007 with questions related to changes in the program.

Sincerely,

Patti Samuel, Chief Client Financial Services Section

Enclosure

## TRAILER BILL IMPLEMENTATION PLAN

#### PURCHASE OF EXPERIMENTAL TREATMENTS

4648(a)(15). "Notwithstanding any other provision of law or regulation to the contrary, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice. For regional center consumers receiving these services as part of their individual program plan (IPP) or individualized family service plan (IFSP) on July 1, 2009, this prohibition shall apply on August 1, 2009."

#### MAXIMIZING GENERIC RESOURCES

4659(c) "Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009."

## DOCUMENTATION OF DENIAL BY GENERIC RESOURCE FOR MEDICAL/DENTAL SERVICES

4659(d) "Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, a regional center shall not purchase medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit. If, on July 1, 2009, a regional center is purchasing the service as part of a consumer's IPP, this provision shall take effect on August 1, 2009. Regional centers may pay for medical or dental services during the following periods:

- (A) While coverage is being pursued, but before a denial is made.
- (B) Pending a final administrative decision on the administrative appeal if the family has provided to the regional center a verification that an administrative appeal is being pursued.
- (C) Until the commencement of services by Medi-Cal, private insurance, or a health care service plan."

## LEAST COSTLY VENDOR

4648(a)(6)(D) "(6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 or subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

- (A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.
  - (B) A provider's success in achieving the objectives set forth in the individual program plan.
  - (C) Where appropriate, the existence of licensing, accreditation, or professional certification.
- (D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.
- (E) The consumer's or, where appropriate, the parents, legal guardian, or conservator of a consumer's choice of providers."

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#### ANNUAL STATEMENT OF SERVICES

4648(h) "At least annually, regional centers shall provide the consumer, his or her parents, legal guardian, conservator, or authorized representative a statement of services and supports the regional center purchased for the purpose of ensuring that they are delivered. The statement shall include the type, unit, month, and cost of services and supports purchased."

## EARLY START – USE PRIVATE INSURANCE

Government Code section 95004 "The early intervention services specified in this title shall be provided as follows:

- (a) Direct services for eligible infants and toddlers and their families shall be provided pursuant to the existing regional center system under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and the existing local education agency system under appropriate sections of Part 30 (commencing with Section 56000) of the Education Code and regulations adopted pursuant thereto, and Part C of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.).
- (b) (1) In providing services under this title, regional centers shall comply with the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, and its implementing regulations (Division 2 (commencing with Section 50201) of Title 17 of the California Code of Regulations) including, but not limited to, those provisions relating to vendorization and ratesetting, and the Family Cost Participation Program, except where compliance with those provisions would result in any delays in, the provision of early intervention, or otherwise conflict with this title and the regulations implementing this title (Chapter 2 (commencing with Section 52000) of Division 2 of Title 17 of the California Code of Regulations), or Part C of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.), and applicable federal regulations contained in Part 303 (commencing with Section 303.1) of Title 34 of the Code of Federal Regulations.

  Notwithstanding any other law or regulation to the contrary, a family's private insurance for medical services or a health care service plan identified in the individualized family service plan, other than for evaluation and assessment, shall be used in compliance with applicable federal and state law and regulation.
- (2) When compliance with this subdivision would result in any delays in the provision of early intervention services for the provision of any of these services, the department may authorize a regional center to use a special service code that allows immediate procurement of the service.

- (c) Services shall be provided by family resource centers that provide, but are not limited to, parent-to-parent support, information dissemination and referral, public awareness, family professional collaboration activities, and transition assistance for families.
- (d) Existing obligations of the state to provide these services at state expense shall not be expanded.
- (e) It is the intent of the Legislature that services be provided in accordance with Sections 303.124, 303.126, and 303.527 of Title 34 of the Code of Federal Regulations."

## EARLY START ELIGIBILITY CRITERIA, PROVISION OF REQUIRED SERVICES

Government Code Section 95014(a)(1) "The term "eligible infant or toddler" for the purposes of this title means infants and toddlers from birth through two years of age, for whom a need for early intervention services, as specified in the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) and applicable regulations, is documented by means of assessment and evaluation as required in Sections 95016 and 95018 and who meet one of the following criteria:

(1) Infants and toddlers with a developmental delay in one or more of the following five areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development. Developmentally delayed infants and toddlers are those who are determined to have a significant difference between the expected level of development for their age and their current level of functioning. This determination shall be made by qualified personnel who are recognized by, or part of, a multidisciplinary team, including the parents. A significant difference is defined as a 33-percent delay in one developmental area before 24 months of age, or, at 24 months of age or older, either a delay of 50 percent in one developmental area or a 33-percent delay in two or more developmental areas. The age for use in determination of eligibility for the Early Intervention Program shall be the age of the infant or toddler on the date of the initial referral to the Early Intervention Program."

# REQUIRED EARLY INTERVENTION SERVICES AND ELIMINATING NONREQUIRED SERVICES

Government Code Section 95020(e)(3): "Each service identified on the individualized family service plan shall be designated as one of three types: (3)A referral to a nonrequired service that may be provided to an eligible infant or toddler or his or her family. Nonrequired services are those services that are not defined as early intervention services or do not relate to meeting the special developmental needs of an eligible infant or toddler related to the disability, but

that may be helpful to the family. The granting or denial of nonrequired services by a public or private agency is not subject to appeal under this title. Notwithstanding any other provision of law or regulation to the contrary, effective July 1, 2009, with the exception of durable medical equipment, regional centers shall not purchase nonrequired services, but may refer a family to a nonrequired service that may be available to an eligible infant or toddler or his or her family."

#### PREVENTION PROGRAM

4435(a): "The department shall establish a prevention program for at-risk babies. For purposes of this section, "at-risk baby" means a child under 36 months of age who is otherwise not eligible for the California Early Intervention Program pursuant to Title 14 (commencing with Section 95000) of the Government Code or services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)) and whose genetic, medical, developmental, or environmental history is predictive of a substantially greater risk for developmental disability than that for the general population, the presence of which is diagnosed by qualified clinicians.

- (b) This program shall provide intake, assessment, case management, and referral to generic agencies. For purposes of this section, "generic agency" means any agency that has a legal responsibility to serve the general public and that is receiving public funds for providing these services.
- (c) The department shall allocate to each regional center, subject to appropriation, specific funding for this program. A regional center's total expenditures for purchasing or providing services under the prevention program shall not exceed the funding allocated in its contract for this purpose.
- (d) The department shall establish policies and procedures for implementation of the prevention program by regional centers. These policies and procedures shall define other services included in this program and the process for appealing denial of eligibility for the prevention program."

# GROUP TRAINING FOR PARENTS ON BEHAVIORAL INTERVENTION AND TECHNIQUES AND UTILIZATION OF NEIGHBORHOOD PRESCHOOLS

Government Code Section 95020(d)(5)(b): "(d)The individualized family service plan shall be in writing and shall address all of the following:" "(5)(B)Effective July 1, 2009, at the time of development, review, or modification of an infant's or toddler's individualized family service plan, the regional center shall consider both of the following:

- (i) The use of group training for parents on behavior intervention techniques, in lieu of some or all of the in-home parent training component of the behavior intervention services.
- (ii) The purchase of neighborhood preschool services and needed qualified personnel, in lieu of infant development programs.
- 4685(c)(3)(B): "(B) Effective July 1, 2009, at the time of development, review, or modification of a child's individualized family service plan or individual program plan, the regional center shall consider both of the following:
- (i) The use of group training for parents on behavioral intervention techniques in lieu of some or all of the in-home parent training component of the behavioral intervention services.
- (ii) The purchase of neighborhood preschool services and needed qualified personnel in lieu of infant development programs.
- (4) If the parent of any child receiving services and supports from a regional center believes that the regional center is not offering adequate assistance to enable the family to keep the child at home, the parent may initiate a request for fair hearing as established in this division. A family shall not be required to start a placement process or to commit to placing a child in order to receive requested services.
- (5) Nothing in this section shall be construed to encourage the continued residency of adult children in the home of their parents when that residency is not in the best interests of the person.
- (6) When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.
- (7) A regional center may purchase or provide a voucher for diapers for children three years of age or older. A regional center may purchase or provide vouchers for diapers under three years of age when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home."

## BEHAVIORAL SERVICE STANDARDS

Government Code, Section 95021: "(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, any vendor who provides applied behavioral analysis (ABA) services or intensive behavioral intervention services, or both, as defined in subdivision (d), shall:

- (1) Conduct a behavioral assessment of each infant or toddler to whom the vendor provides these services.
- (2) Design an intervention plan that shall include the service type, number of hours, and parent participation needed to achieve the goals and objectives of the infant or toddler, as set forth in his or her individualized family service plan (IFSP). The intervention plan shall also set forth the frequency at which the progress of the infant or toddler shall be evaluated and reported.
- (3) Provide a copy of the intervention plan to the regional center for review and consideration by the planning team members.
- (b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:
- (1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.
- (2) Only purchase ABA or intensive behavioral intervention services when the parent or parents of an infant or toddler receiving services participate in the intervention plan for the infant or toddler, given the critical nature of parent participation to the success of the intervention plan.
- (3) Not purchase either ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services.
- (4) Discontinue purchasing ABA or intensive behavioral intervention services for an infant or toddler when his or her treatment goals and objectives, as described under subdivision (a), are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objectives are reviewed and updated as required in paragraph (5) and shall be discontinued only if those updated treatment goals and objectives do not require ABA or intensive behavioral intervention services.
- (5) For each infant or toddler, evaluate the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention no less than every six months, consistent with evidence-based practices. If necessary, the intervention plan's treatment goals and objectives shall be updated and revised.
  - (6) Not reimburse a parent for participating in a behavioral services treatment program.
- (c) For infants and toddlers receiving ABA or behavioral intervention services on July 1, 2009, as part of their IFSP, subdivision (b) shall apply on August 1, 2009.
  - (d) For purposes of this section the following definitions shall apply:

(1) "Applied behavioral analysis" means the design,

implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.

- (2) "Intensive behavioral intervention" means any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. Interventions can be delivered in a one-to-one ratio or small group format, as appropriate.
- (3) "Evidence-based practice" means a decision making process which integrates the best available scientifically rigorous research, clinical expertise, and individual's characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, Clinically-observed, and research-supported evidence. The best available evidence, matched to infant or toddler circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.
- (4) "Parent" has the same meaning as defined in paragraph (15) of subdivision (b) of Section 52000 of Title 17 of the California Code of Regulations.
  - (5) "Parent participation" shall include, but shall not be limited to, the following meanings:
  - (A) Completion of group instruction on the basics of behavior intervention.
- (B) Implementation of intervention strategies according to the intervention plan.
- (C) If needed, collection of data on behavioral strategies and submission of that data to the provider for incorporation into progress reports.
  - (D) Participation in any needed clinical meetings.
- (E) Purchase of suggested behavior modification materials or community involvement if a reward system is used."
- 4686.2(a) "Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, any vendor who provides applied behavioral analysis (ABA) services, or intensive behavioral intervention services or both, as defined in subdivision (d), shall:

- (1) Conduct a behavioral assessment of each consumer to whom the vendor provides these services.
- (2) Design an intervention plan that shall include the service type, number of hours and parent participation needed to achieve the consumer's goals and objectives, as set forth in the consumer's individual program plan (IPP) or individualized family service plan (IFSP). The intervention plan shall also set forth the frequency at which the consumer's progress shall be evaluated and reported.
- (3) Provide a copy of the intervention plan to the regional center for review and consideration by the planning team members.
- (b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:
- (1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.
- (2) Only purchase ABA or intensive behavioral intervention services when the parent or parents of minor consumers receiving services participate in the intervention plan for the consumers, given the critical nature of parent participation to the success of the intervention plan.
- (3) Not purchase either ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services.
- (4) Discontinue purchasing ABA or intensive behavioral intervention services for a consumer when the consumer's treatment goals and objectives, as described under subdivision (a), are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objectives are reviewed and updated as required in paragraph (5) and shall be discontinued only if those updated treatment goals and objectives do not require ABA or intensive behavioral intervention services.
- (5) For each consumer, evaluate the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention no less than every six months, consistent with evidence-based practices. If necessary, the intervention plan's treatment goals and objectives shall be updated and revised.
  - (6) Not reimburse a parent for participating in a behavioral services treatment program.
- (c) For consumers receiving ABA or behavioral intervention services on July 1, 2009, as part of their IPP or IFSP, subdivision (b) shall apply on August 1, 2009.
  - (d) For purposes of this section the following definitions shall apply:

- (1) "Applied behavioral analysis" means the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.
- (2) "Intensive behavioral intervention" means any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. Interventions can be delivered in a one-to-one ratio or small group format, as appropriate.
- (3) "Evidence-based practice" means a decision making process that integrates the best available scientifically rigorous research, clinical expertise, and individual's characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, clinically-observed, and research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.
  - (4) "Parent participation" shall include, but shall not be limited to, the following meanings:
- (A) Completion of group instruction on the basics of behavior intervention.
- (B) Implementation of intervention strategies, according to the intervention plan.
- (C) If needed, collection of data on behavioral strategies and submission of that data to the provider for incorporation into progress reports.
  - (D) Participation in any needed clinical meetings.
- (E) Purchase of suggested behavior modification materials or community involvement if a reward system is used."

## LARGE FACILITIES

4648(a)(3)(E): "Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, a regional center shall not newly vendor a State Department of Social Services licensed 24-hour residential care facility with a licensed capacity of 16 or more beds, unless the facility qualifies for receipt of federal funds under the Medicaid Program."

- 4648(a)(9)(B): "Effective July 1, 2012, notwithstanding any other provision of law or regulation to the contrary, a regional center shall not purchase residential services from a State Department of Social Services licensed 24-hour residential care facility with a licensed capacity of 16 or more beds. This prohibition on regional center purchase of residential services shall not apply to either of the following:
- (i) A residential facility with a licensed capacity of 16 or more beds that has been approved to participate in the department's Home and Community Based Services Waiver or another existing waiver program or certified to participate in the Medi-Cal program.
- (ii) A residential facility service provider that has a written agreement and specific plan prior to July 1, 2012, with the vendoring regional center to downsize the existing facility by transitioning its residential services to living arrangements of 15 beds or less or restructure the large facility to meet federal Medicaid eligibility requirements on or before June 30, 2013."

## TRANSPORTATION REFORM

- 4648.35: "Effective July 1, 2009, at the time of development, review, or modification of a consumer's individual program plan (IPP) or individualized family service plan (IFSP), all of the following shall apply to a regional center:
- (a) A regional center shall not fund private specialized transportation services for an adult consumer who can safely access and utilize public transportation, when that transportation is available.
- (b) A regional center shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP or IFSP.
- (c) A regional center shall fund transportation, when required, from the consumer's residence to the lowest-cost vendor that provides the service that meets the consumer's needs, as set forth in the consumer's IPP or IFSP. For purposes of this subdivision, the cost of a vendor shall be determined by combining the vendor's program costs and the costs to transport a consumer from the consumer's residence to the vendor.
- (d) A regional center shall fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child."

## TEMPORARILY SUSPEND SERVICES

4648.5(a): "Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

- (1) Camping services and associated travel expenses.
- (2) Social recreation activities, except for those activities vendored as community-based day programs.
  - (3) Educational services for children three to 17, inclusive, years of age.
- (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.
- (b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.
- (c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's

developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs."

## INDIVIDUAL CHOICE BUDGET

4648.6 "The department, in consultation with stakeholders, shall develop an alternative service delivery model that provides an Individual Choice Budget for obtaining quality services and supports which provides choice and flexibility within a finite budget that in the aggregate reduces regional center purchase of service expenditures, reduces reliance on the state general fund, and maximizes federal financial participation in the delivery of services. The individual budget will be determined using a fair, equitable, transparent standardized process."

## EXPANSION OF IN-HOME RESPITE AGENCY WORKER DUTIES

4686(a). "Notwithstanding any other provision of law or regulation to the contrary, an in-home respite worker who is not a licensed health care professional but who is trained by a

licensed health care professional may perform incidental medical services for consumers of regional centers with stable conditions, after successful completion of training as provided in this section. Incidental medical services provided by trained in-home respite workers shall be limited to the following:

- (1) Colostomy and ileostomy: changing bags and cleaning stoma.
- (2) Urinary catheter: emptying and changing bags and care of catheter site.
- (3) Gastrostomy: feeding, hydration, cleaning stoma, and adding medication per physician's or nurse practitioner's orders for the routine medication of patients with stable conditions.
- (b) In order to be eligible to receive training for purposes of this section, an in-home respite worker shall submit to the trainer proof of successful completion of a first aid course and successful completion of a cardiopulmonary resuscitation course within the preceding year.
- (c) The training in incidental medical services required under this section shall be provided by physicians or registered nurses. Training in gastrostomy services shall be provided by a physician or registered nurse, or through a gastroenterology or surgical center in an acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, which meets California Children Services' Program standards for centers for children with congenital gastrointestinal disorders, or comparable standards for adults, or by a physician or registered nurse who has been certified to provide training by the center.
- (d) The in-home respite agency providing the training shall develop a training protocol which shall be submitted for approval to the State Department of Developmental Services. The department shall approve those protocols that specifically address both of the following:
- (1) A description of the incidental medical services to be provided by trained in-home respite workers.
- (2) A description of the protocols by which the training will be provided. Protocols shall include a demonstration of the following skills by the trainee:
  - (A) Care of the gastrostomy, colostomy, ileostomy, or urinary catheter site.
- (B) Performance of gastrostomy tube feeding, changing bags and cleaning stoma of colostomy or ileostomy sites, and emptying and changing urinary catheter bags.
- (c) Identification of, and appropriate response to, problems and complications associated with gastrostomy care and feeding, colostomy and ileostomy care, and care of urinary catheter sites.
  - (D) Continuing education requirements.

- (e) Training by the gastroenterology or surgical center, or the certified physician or registered nurse, shall be done in accordance with the approved training protocol. Training of in-home respite workers shall be specific to the individual needs of the regional center consumer receiving the incidental medical service and shall be in accordance with orders from the consumer's treating physician or surgeon.
- (f) The treating physician or surgeon shall give assurances to the regional center that the patient's condition is stable prior to the regional center's purchasing incidental medical services for the consumer through an appropriately trained respite worker.
- (g) Prior to the purchase of incidental medical services through a trained respite worker, the regional center shall do all of the following:
- (1) Ensure that a nursing assessment of the consumer, performed by a registered nurse, is conducted to determine whether an in-home respite worker, licensed vocational nurse, or registered nurse may perform the services.
- (2) Ensure that a nursing assessment of the home has been conducted to determine whether incidental medical services can appropriately be provided in that setting.
  - (h) The agency providing in-home respite services shall do all of the following:
  - (1) Ensure adequate training of the in-home respite worker.
- (2) Ensure that telephone backup and emergency consultation by a registered nurse or physician is available.
- (3) Develop a plan for care specific to the incidental medical services provided to be carried out by the respite worker.
- (4) Ensure that the in-home respite worker and the incidental medical services provided by the respite worker are adequately supervised by a registered nurse.
- (i) Notwithstanding any other provision of law or regulation to the contrary, the hourly rate for an in-home respite agency shall be increased to provide a fifty cent (\$.50) per hour wage increase and an eight-cent (\$.08) per hour benefit increase for the hours the in-home respite agency is providing incidental medical services.
- (j) To expand the availability of trained in-home respite agency staff, a regional center may reimburse the in-home respite agency up to two hundred dollars (\$200) semiannually, for the provision of training pursuant to subdivision (c).
- (k) For purposes of this section, "in-home respite worker" means an individual employed by an agency which is vendored by a regional center to provide in-home respite services. These

agencies include, but are not limited to, in-home respite services agencies, home health agencies, or other agencies providing these services."

#### RESPITE PROGRAM – TEMPORARY SERVICE STANDARDS

4686.5(a). "Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

- (1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.
- (2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.
- (3) (A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.
- (B) For purposes of this section, "family member" means an individual who:
- (c) Has a consumer residing with him or her.
  - (ii) Is responsible for the 24-hour care and supervision of the consumer.
- (iii) Is not a licensed or certified residential care facility or foster family home receiving funds from any public agency or regional center for the care and supervision provided. Notwithstanding this provision, a relative who receives foster care funds shall not be precluded from receiving respite.
- (4) A regional center shall not purchase day care services to replace or supplant respite services. For purposes of this section, "day care" is defined as regularly provided care, protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours per day, while the parents are engaged in employment outside of the home or educational activities leading to employment, or both.
- (5) A regional center shall only consider in-home supportive services a generic resource when the approved in-home supportive services meets the respite need as identified in the consumer's individual program plan (IPP) or individualized family service plan (IFSP).

- (b) For consumers receiving respite services on July 1, 2009, as part of their IPP or IFSP, subdivision (a) shall apply on August 1, 2009.
- (c) This section shall remain in effect until implementation of the individual choice budget pursuant to Section 4648.6 and certification by the Director of the Department of Developmental Services that the individual choice budget has been implemented and will result in state budget savings sufficient to offset the costs associated with the repeal of this section. This section shall be repealed on the date of certification."

## NEW SERVICE FOR SENIOR SERVICES AT REDUCED RATES

4688.1(a). "Notwithstanding any other provision of law or regulation to the contrary, vendors of behavior management, activity center, and adult development center day programs, social recreation programs, socialization training programs, community integration training programs, community activities support programs, creative art programs, and work activity programs shall offer an alternative senior program component focused on the needs of individuals with developmental disabilities who are over 50 years of age, at a rate not to exceed the lesser of thirty-five dollars (\$35) per day or the vendor's existing daily rate.

- (1) The alternative senior program component shall be provided at a ratio of no more than eight consumers to one staff member.
  - (2) Consistent with the intent of the Lanterman Developmental

Disabilities Services Act, the alternative senior program component shall be offered within the provider's existing vendored capacity as reflected in its program design or licensed capacity.

(b) Effective July 1, 2009, at the time of development, review, or modification of an eligible consumer's individual program plan, regional centers, as appropriate, shall provide information about and offer an alternative senior program. The alternative senior program shall be offered to eligible consumers who want to transition to a program component focused on the needs and interests of seniors."

## **CUSTOM ENDEAVORS OPTIONS (CEO)**

4688.2(a). "Notwithstanding any other provision of law or regulation to the contrary, vendors of behavior management, activity center, and adult development center adult day programs, community integration training programs, and community activities support services programs shall offer an alternative customized program component with an appropriate staffing component to meet individualized consumer needs.

- (1) The alternative customized program component shall be offered within the provider's existing vendored capacity, as reflected in its program design or licensed capacity.
- (2) The regional center shall fund customized programs based on the vendor's existing rate and only fund those hours provided.
- (b) Effective July 1, 2009, at the time of development, review, or modification of a consumer's individual program plan, regional centers, as appropriate, shall provide information about and make available the customized program option.
- (1) The alternative customized program component shall be offered to individuals with developmental disabilities who want a program focused on their individualized needs and interests to develop or maintain employment or volunteer activities in lieu of their current program.
- (2) Total hours of service for this alternative customized program shall range between 20 and 80 hours per month, per person, depending on the support needs of the individual."

## SUPPORTED LIVING SERVICES

4689. Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred

objective in the individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

- (a) The department and regional centers shall ensure that supported living arrangements adhere to the following principles:
- (1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.
- (2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.
- (3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.
  - (4) Consumers shall have control over the environment within their own home.

- (5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.
- (6) The services or supports shall be flexible and tailored to a consumer's needs and preferences.
- (7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.
- (8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.
- (b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes.
- (c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and support; development and provision of 24-hour emergency response systems; securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation. Assessment of consumer needs may begin before 18 years of age to enable the consumer to move to his or her own home when he or she reaches 18 years of age.
- (d) Regional centers shall provide information and education to consumers and their families about supported living principles and services.
- (e) Regional centers shall monitor and ensure the quality of services and supports provided to individuals living in homes that they own or lease. Monitoring shall take into account all of the following:
  - (1) Adherence to the principles set forth in this section.
- (2) Whether the services and supports outlined in the consumer's individual program plan are congruent with the choices and needs of the individual.
- (3) Whether services and supports described in the consumer's individual program plan are being delivered.
  - (4) Whether services and supports are having the desired effects.

- (5) Whether the consumer is satisfied with the services and supports.
- (f) The planning team, established pursuant to subdivision (j) of

Section 4512, for a consumer receiving supported living services shall confirm that all appropriate and available sources of natural and generic supports have been utilized to the fullest extent possible for that consumer.

- (g) Regional centers shall utilize the same supported living provider for consumers who reside in the same domicile, provided that each individual consumer's particular needs can still be met pursuant to his or her individual program plans.
- (h) Rent, mortgage, and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer.
- (i) A regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers receiving supported living services, except under the following circumstances:
- (1) If all of the following conditions are met, a regional center may make rent, mortgage, or lease payments as follows:
- (A) The regional center executive director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's individual program plan, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.
- (B) During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the supported living services vendor shall assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer.
- (C) The regional center shall not make rent, mortgage, or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's individual program plan. The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's individual program plan that the requirements set forth in subparagraph (A) continue to be met.
- (2) A regional center that has been contributing to rent, mortgage, or lease payments or paying for household expenses prior to July 1, 2009, shall at the time of development, review, or

- modification of a consumer's individual program plan determine if the conditions in paragraph (1) are met. If the planning team determines that these contributions are no longer appropriate under this section, a reasonable time for transition, not to exceed six months, shall be permitted.
- (j) All paid roommates and live-in support staff in supported living arrangements in which regional centers have made rent, mortgage, or lease payments, or have paid for household expenses pursuant to subdivision (i) shall pay their share of the rent, mortgage, or lease payments or household expenses for the supported living home, subject to the requirements of Industrial Welfare Commission Order No. 15-2001 and the Housing Choice Voucher Program, as set forth in Section 1437f of Title 42 of the United States Code.
- (k) Regional centers shall ensure that the supported living services vendors' administrative costs are necessary and reasonable, given the particular services that they are providing and the number of consumers to whom the vendor provides services. Administrative costs shall be limited to allowable costs for community-based day programs, as defined in Section 57434 of Title 17 of the California Code of Regulations, or its successor.
- (1) Regional centers shall ensure that the most cost-effective of the rate methodologies is utilized to determine the negotiated rate for vendors of supported living services, consistent with Section 4689.8 and Title 17 of the California Code of Regulations.
- (m) For purposes of this section, "household expenses" means general living expenses and includes, but is not limited to, utilities paid and food consumed within the home.
- (n) A supported living services provider shall provide assistance to a consumer who is a Medi-Cal beneficiary in applying for in-home supportive services, as set forth in Section 12300, within five days of the consumer moving into a supported living services arrangement."

## IN-HOME SUPPORTIVE SERVICES (IHSS)

4689.05(a). "A regional center shall not purchase supportive services, as defined in Section 12300, for a consumer who meets the criteria to receive, but declines to apply for, in-home supportive services (IHSS) benefits, as set forth in Section 12300, except as set forth in subdivision (d).

- (b) Consistent with Section 4648, a regional center shall not purchase supported living services for a consumer to supplant IHSS.
- (c) Between the date that a consumer applies for IHSS and the date that a consumer's application for IHSS is approved, a regional center <u>shall not purchase supportive services</u> for the consumer at a rate that exceeds the IHSS hourly rate, which includes the IHSS

provider hourly wage, the provider's hourly payroll taxes, and the hourly administrative costs, for the county in which the consumer resides.

(d) A regional center executive director may waive the requirements set forth in subdivision (a) if the executive director finds that extraordinary circumstances warrant the waiver, and that a finding is documented in an addendum to the consumer's individual program plan.

#### UNIFORM HOLIDAY SCHEDULE

4692(a). "Effective August 1, 2009, subject to subdivisions (c) and (e), regional centers shall not compensate a work activity program, activity center, adult development center, behavior management program, social recreation program, adaptive skills trainer, infant development program, program support group (day service), socialization training program, client/parent support behavior intervention training program, community integration training program, community activities support service, or creative arts program, as defined in Title 17 of the California Code of Regulations, for providing any service to a consumer on any of the following holidays:

- (1) January 1.
- (2) The third Monday in January.
- (3) The third Monday in February.
- (4) March 31.
- (5) The last Monday in May.
- (6) July 4.
- (7) The first Monday in September.
- (8) November 11.
- (9) Thanksgiving Day.
- (10) December 25.
- (11) The four business days between December 25 and January 1.
- (b) Effective August 1, 2009, subject to subdivisions (c) and (e), regional centers shall not compensate a transportation vendor/family member, transportation company, transportation/additional component vendor, transportation broker, transportation

assistant/vendor, transportation vendor/auto driver, or transportation vendor/public or rental car agency or taxi, in accordance with Title 17 of the California Code of Regulations, for transporting any consumer to receive services from any of the vendors specified in subdivision (a) for any of the holidays set forth in paragraphs (1) to (11), inclusive, of subdivision (a).

- (c) If a holiday listed in this section falls on a Saturday or a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed.
- (d) Contracts between the vendors described in this section and regional centers shall reflect the holiday closures set forth in this section and shall be renegotiated accordingly, as necessary.
- (e) The department may adjust the holidays set forth in subdivision (a) through a program directive. This directive shall be provided to the regional centers and posted on the department's Internet Web site at least 60 days prior to the effective date of the change in holiday.

## PARENTAL FEE PROGRAM

4784(a). "The Director of Developmental Services shall establish, annually review, and adjust as needed, a schedule of parental fees for services received through the regional centers. Effective July 1, 2009, this schedule shall be revised to reflect changes in economic conditions that affect parents' ability to pay the fee, but not to exceed an inflationary factor as determined by the department.

- (b) The parental fee schedule established pursuant to this section shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
- (c) In establishing the amount parents shall pay, the director shall take into account all of the following factors:
- (1) The current cost of caring for a child at home, as determined by the most recent data available from the United States Department of Agriculture's survey on the cost of raising a child in California, adjusted for the Consumer Price Index (CPI) from the survey date to the date of payment adjustment.
  - (2) Medical expenses incurred prior to regional center care.
  - (3) Whether the child is living at home.
- (4) Parental payments for medical expenses, clothing, incidentals, and other items considered necessary for the normal rearing of a child.

- (5) Transportation expenses incurred in visiting a child.
- (d) The parental fee schedule shall exempt families with an income below the federal poverty level from assessment and payment of the parental fee.
- (e) (1) The adjusted fee shall be assessed in full for children, when the out-of-home placement commences on or after July 1, 2009.
- (2) For children placed out-of-home prior to July 1, 2009, the department shall determine the increase in the parental fee above the amount assessed using the fee schedule in effect on June 30, 2009. This fee increase shall be implemented over three years, with one-third of the increase added to the fee on July 1, 2009, one-third of the increase added to the fee on July 1, 2010, and the final third added to the fee on July 1, 2011.
- (f) Notwithstanding any other provision of law or regulation to the contrary, commencing July 1, 2009, all fees collected shall be remitted to the State Treasury to be deposited as follows:
- (1) Fees collected up to the amount that would be assessed using the fee schedule in effect on June 30, 2009, shall be deposited into the Program Development Fund established in Chapter 6 (commencing with Section 4670) to provide resources needed to initiate new programs, consistent with approved priorities for program development in the state plan.
- (2) Fees collected using the July 1, 2009, schedule that are greater than the amount that would have been assessed using the fee schedule in effect on June 30, 2009, shall be deposited into the Program Development Fund and shall be available for expenditure by the department to offset General Fund costs."

# QUALITY ASSURANCE CONSOLIDATION (MOVER'S STUDY AND LIFE QUALITY ASSESSMENTS)

- 4418.1(a). "The Legislature recognizes that it has a special obligation to ensure the well-being of persons with developmental disabilities who are moved from state hospitals to the community.
- (b) To ensure that persons with developmental disabilities who are moved from state hospitals to the community are receiving necessary services and supports, the department shall contract with an independent agency or organization for the tracking and monitoring of those persons, including all persons moved as a result of the Coffelt v. State Department of Developmental Services settlement agreement and any persons moved after the terms of that agreement have been met.
  - (c) The contractor shall be experienced in all of the following:
  - (1) Designing valid tracking instruments.

- (2) Tracking the quality of community programs, including outcome-based measures such as health and safety, quality of life, integration, choice, and consumer satisfaction.
- (3) Tracking the quality and appropriateness of community placements for persons moving from large institutions into community settings.
  - (4) Developing data systems.
  - (5) Data analysis and report preparation.
- (d) The contractor shall measure consumer and family satisfaction with services provided, including case management and quality of life, including, but not limited to, health and safety, independence, productivity, integration, opportunities for choice, and delivery of needed services.
- (e) The information maintained for each person shall include the person's name, address, nature of disability, medical condition, scope of community-based services and supports, and the annual data collected by the contractor.
- (f) The contractor shall meet with each person, and the person's family, legal guardian, or conservator, when appropriate, no less than once a year to discuss quality of life and observe the person's services and supports. In cases where the consumer is not capable of communicating his or her responses and where there is no family member, guardian, or conservator involved, the contractor shall meet with no less than two persons familiar with the consumer. Additionally, the contractor shall interview staff and friends who know the consumer best and review records, as appropriate.
- (g) If the contractor identifies any suspected violation of the legal, civil, or service rights of an individual, or if the

contractor determines that the health and welfare of the individual is at risk, that information shall be provided immediately to the regional center providing case management services, the client rights advocate, and to the department.

- (h) The department shall monitor the corrective actions taken by the regional center and maintain a report in the person's file. The consumer and, when appropriate, his or her parents, legal guardian, or conservator, shall be provided with access to the person's file and be provided with copies of all reports filed with the regional center or department relative to them.
- (i) The department shall establish a task force, including representatives from stakeholder organizations, to annually review the findings of the contractor and make recommendations regarding additional or differing criteria for information to be gathered by the contractor in future interviews."

## ELIMINATE TRIENNIAL QUALITY ASSURANCE REVIEW

4648.1(i). "Effective July 1, 2009, a regional center shall not be required to perform triennial evaluations of community care facilities, as described in Sections 56046, 56049, 56050, 56051, and 56052 of Title 17 of the California Code of Regulations."

## STATE PLAN AMENDMENT

4688.3(a). "The State Department of Health Care Services and the department shall jointly seek a federal Centers for Medicare and Medicaid Services' (CMS) approved 1915(i) state plan amendment to expand federal financial participation for services to persons with developmental disabilities provided by regional centers pursuant to Division 4.5 (commencing with Section 4500).

- (b) Services provided pursuant to this section shall be rendered under the administrative direction of the department. The department may issue program directives to regional centers for implementing the approved state plan amendment.
- (c) If CMS approves the state plan amendment pursuant to Section 1915(i) of the Social Security Act, the Director of Health Care Services shall execute a declaration stating that this approval has been granted. The director shall retain the declaration and this section shall be implemented commencing on the date that the director executes a declaration pursuant to this subdivision.
- (d) The department may adopt regulations to implement this section and any sections in Division 4.5 (commencing with Section 4500) necessary to implement the terms of the 1915(i) state plan amendment. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.9 of the Government Code, and the department is hereby exempted from that requirement. For purposes of subdivision (e) of Section 11346.1 of

the Government Code, the 120-day period, as applicable to the effective period of an emergency regulatory action and submission of specified materials to the Office of Administrative Law, is hereby extended to 180 days.

- (e) The department shall adopt regulations to implement the terms of the 1915(i) state plan amendment though the regular rulemaking process pursuant to Sections 11346 and 11349.1 of the Government Code within 18 months of the adoption of emergency regulations pursuant to subdivision (d).
- (f) The department shall consult with stakeholders, as defined in subdivision (k) of Section 4512.

(g) The State Department of Health Care Services shall post a copy of, or a link to, the approved state plan amendment and any State Department of Developmental Services regulations or program directives, or both, issued pursuant to this section on its Internet Web site."

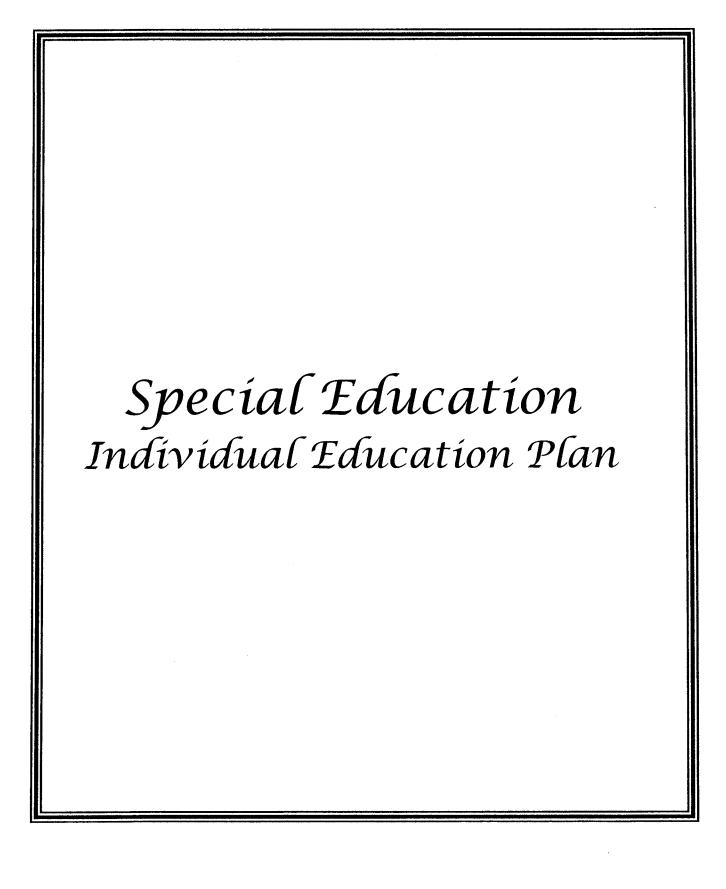
### PORTERVILLE DEVELOPMENTAL CENTER MAXIMUM OCCUPANCY

7502.5. "The total number of developmental center residents in the secure treatment facility at Porterville Developmental Center, including those residents receiving services in the Porterville Developmental Center transition treatment program, shall not exceed 297."

#### COST SAVINGS REPORT TO LEGISLATURE

SEC. 29(a) "The State Department of Developmental Services shall provide information to the Assembly Committee on Budget and the Senate Committee on Budget and Fiscal Review during budget hearings for the 2010-11 fiscal year regarding the effect on the developmental service system of the specific cost containment measures implemented to achieve up to three hundred thirty-four million dollars (\$334,000,000) in General Fund reductions for the 2009-10 fiscal year pursuant to Item 4300-101-0001 of Section 2.00 of the Budget Act of 2009.

(b) The department shall continue to convene, as appropriate, a stakeholder review process to obtain information and comments about implementation of the cost containment measures and their effect on the developmental service system. The stakeholder review process shall include statewide organizations representing the interests of consumers, family members, service providers, and statewide advocacy organizations, as well as policy and fiscal staff of the Legislature."



### What is Special Education

Special Education is an individualized education program designed to help children reach their highest potential. It is provided for children, birth through age 21, who qualify according to laws and regulations outlined by state and federal governments.

Children receive special education instruction and services according to their specific needs. Children are placed in special education programs only after resources of the general education program have been considered and utilized when appropriate. The following are the eligibility categories for special education:

Autism (AUT)
Deafness (DEAF)
Deaf/Blindness (DB)
Emotional Disturbance (ED)
Established Medical Disability (EMD) (0-5 years only) Hard of Hearing (HH)
Mental Retardation (MR)
Multiple Disability (MD)
Orthopedic Impairment (01)
Other Health Impairment (OHI)
Specific Learning Disability (SLD)
Speech or Language Impairment (SLI)
Traumatic Brain Injury (TBI)
Visual Impairment (VI)

Low Incidence funds are also granted to the SELPA based on the number of students in the following categories: Deaf, Deaf/Blind, Hard of Hearing, Visually Impaired, and Severe Orthopedic Impairment. Students in these categories can access these funds for specialized equipment and materials.

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#### What is an IEP?

- Comprehensive: The IEP covers all deficit areas, including communication, behavior, socialization, self-help, academics, perceptualmotor and gross-motor skills, vocational skills, and transition services, related services, and needed accommodations in both general (regular and vocational) and special education.
- Specific: The IEP goals and objectives are stated in measurable, observable behaviors.
- Sequential: The IEP is based on a developmental or functional sequence of skills.
- Realistic and Age Appropriate: The IEP goals and objectives shout fit the student's current level of functioning and probable growth rate.
- Understandable: The IEP is written in language that is comprehensible to both parents and professionals. It communicates.
- Mutually Developed: The IEP represents a consensus among parents, the student, and school personnel

An Individualized Education Program (IEP) describes the special education and related services specifically designed to meet the unique educational needs of a student with a disability. The program is developed at one or more IEP meetings, and its provisions are detailed in writing in the IEP.

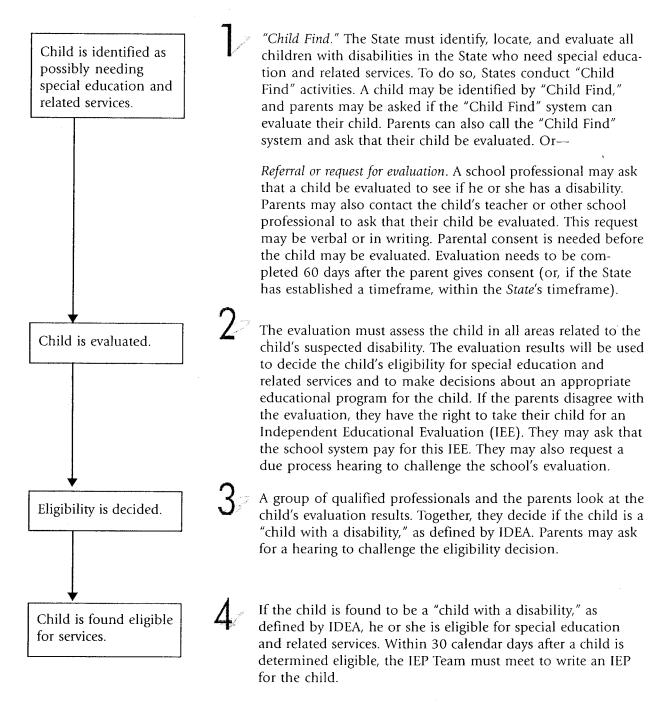
The IEP id developed by a team that includes at least a school administrator, the student's teacher or (regular education teacher), special education staff, staff whom preformed any assessments, parents, and the student when appropriate. It contains goals and objectives based upon the student's present level of educational performance. These goals and objectives are outlined by those involved in planning and providing services. In addition, the IEP specifies the educational placement or setting, and the related services necessary to reach these goals and objectives. It also includes the date the services will begin, how long they will last, and the way in which student progress will be evaluated.

The IEP is a blueprint and a measure of quality assurance that the services for the student's special education program assist in the student making progress based on their plan. It is an opportunity for parents and educators to work together as equal participants to identify the student's needs, what will be provided to meet those needs, and what the anticipated outcomes may be. It is a document that is revised as the

needs of the student change. The IEP is a commitment in writing of the resources the school agrees to provide. Also, the periodic review of the IEP serves as an evaluation of the student's progress toward meeting the educational goals and objectives. Finally, the IEP serves as the focal point for clarifying issues and cooperative decision making by parents, the student and school personnel in the best interest of the student. For all of these reasons, the IEP is the cornerstone of special education.

# The Basic Special Education Process Under IDEA

Here's a brief look at how a child is identified as having a disability and needing special education and related services.



<sup>\*</sup>This flow chart is adapted from Communicating with Your Child's School Through Letter Writing: A Parent's Guide, a 2002 publication of the National Dissemination Center for Children with Disabilities (NICHCY), 1.800.695-0285, nichcy@aed.org, www.nichcy.org.

#### Handout A-2

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## The Basic Special Education Process Under IDEA

Once the student has been found eligible for services, the IEP must be written. The two steps below *summarize* what is involved in writing the IEP.

IEP meeting is scheduled.

5

The school system schedules and conducts the IEP meeting. School staff must:

- contact the participants, including the parents;
- notify parents early enough to make sure they have an opportunity to attend;
- schedule the meeting at a time and place agreeable to parents and the school;
- tell the parents the purpose, time, and location of the meeting;
- tell the parents who will be attending; and
- tell the parents that they may invite people to the meeting who have knowledge or special expertise about the child.

IEP meeting is held and the IEP is written.

6

The IEP Team gathers to talk about the child's needs and write the student's IEP. Parents and the child (when appropriate) are part of the Team. If the child's placement is decided by a different group, the parents must be part of that group as well.

Before the school system may provide special education and related services to the child for the first time, the parents must give consent. The child begins to receive services as soon as possible after the meeting.

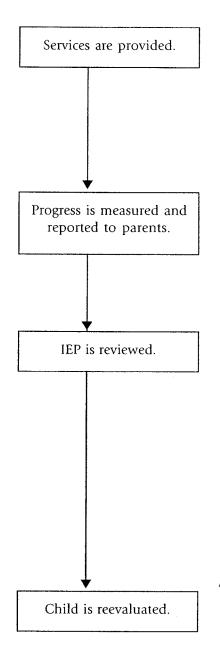
If the parents do not agree with the IEP and placement, they may discuss their concerns with other members of the IEP Team and try to work out an agreement. If they still disagree, parents can ask for mediation, or the school may offer mediation. Parents may file a complaint with the state education agency and may request a due process hearing, at which time a resolution session must be held and mediation must be available.

#### Handout A-2

Page 3 (of 4)

## The Basic Special Education Process Under IDEA

Here is a brief summary of what happens after the IEP is written.



The school makes sure that the child's IEP is being carried out as it was written. Parents are given a copy of the IEP. Each of the child's teachers and service providers has access to the IEP and knows his or her specific responsibilities for carrying out the IEP. This includes the accommodations, modifications, and supports that must be provided to the child in keeping with the IEP.

The child's progress toward the annual goals is measured, as stated in the IEP. His or her parents are regularly informed of the child's progress and whether that progress is enough for the child to achieve the goals by the end of the year. Progress reports are provided to parents in keeping with the IEP.

The child's IEP is reviewed by the IEP Team at least once a year, or more often if the parents or school ask for a review. If necessary, the IEP is revised. Parents, as Team members, must be invited to attend these meetings. Parents can make suggestions for changes, can agree or disagree with the IEP goals, and agree or disagree with the placement.

If parents do not agree with the IEP and placement, they may discuss their concerns with other members of the IEP Team and try to work out an agreement. There are several options, including additional testing, an independent evaluation, or asking for mediation or a due process hearing. They may also file a complaint with the state education agency.

At least every three years the child must be reevaluated, unless the parents and school agree that a reevaluation is unnecessary. This evaluation is often called a "triennial." Its purpose is to find out if the child continues to be a "child with a disability," as defined by IDEA, and what the child's educational needs are. However, the child must be reevaluated more often if conditions warrant or if the child's parent or teacher asks for a new evaluation.

#### A Closer Look at the IEP

Clearly, the IEP is a very important document for children with disabilities and for those who are involved in educating them. Done correctly, the IEP should improve teaching, learning, and results. Each child's IEP describes, among other things, the educational program that has been designed to meet that child's unique needs. This part of the guide looks closely at how the IEP is written and by whom, and what information it must, at a minimum, contain.

#### Contents of the IEP

By law, the IEP must include certain information about the child and the educational program designed to meet his or her unique needs. In a nutshell, this information is:

- Current performance. The IEP must state how the child is currently doing in school (known as present levels of educational performance). This information usually comes from the evaluation results such as classroom tests and assignments, individual tests given to decide eligibility for services or during reevaluation, and observations made by parents, teachers, related service providers, and other school staff. The statement about "current performance" includes how the child's disability affects his or her involvement and progress in the general curriculum.
- Annual goals. These are goals that the child can reasonably accomplish in a year. The goals are
  broken down into short-term objectives or benchmarks. Goals may be academic, address social
  or behavioral needs, relate to physical needs, or address other educational needs. The goals
  must be measurable-meaning that it must be possible to measure whether the student has
  achieved the goals.
- Special education and related services. The IEP must list the special education and related services to be provided to the child or on behalf of the child. This includes supplementary aids and services that the child needs. It also includes modifications (changes) to the program or supports for school personnel-such as training or professional development-that will be provided to assist the child.
- Participation with non-disabled children. The IEP must explain the extent (if any) to which the
  child will not participate with non-disabled children in the regular class and other school activities.
- Participation in state and district-wide tests. Most states and districts give achievement tests to
  children in certain grades or age groups. The IEP must state what modifications in the
  administration of these tests the child will need. If a test is not appropriate for the child, the IEP
  must state why the test is not appropriate and how the child will be tested instead.
- Dates and places. The IEP must state when services will begin, how often they will be provided, where they will be provided, and how long they will last.

- Transition service needs. Beginning when the child is age 14 (or younger, if appropriate),
  the IEP must address (within the applicable parts of the IEP) the courses he or she needs to
  take to reach his or her post-school goals. A statement of transition services needs must also
  be included in each of the child's subsequent IEPs.
- Needed transition services. Beginning when the child is age 16 (or younger, if appropriate), the IEP must state what transition services are needed to help the children prepare for leaving school.
- Age of majority. Beginning at least one year before the child reaches the age of majority; the IEP must include a statement that the student has been told of any rights that will transfer to him or her at the age of majority. (This statement would be needed only in states that transfer rights at the age of majority.)
- Measuring progress. The IEP must state how the child's progress will be measured and how
  parents will be informed of that progress.

More information will be given about these IEP parts later in this guide. A sample IEP form will be presented, along with the federal regulations describing the "Content of the IEP," to help you gain a fuller understanding of what type of information is important to capture about a child in an IEP. It is useful to understand that each child's IEP is different. The document is prepared for that child only. It describes the individualized education program designed to meet that child's needs.

### Additional State and School-System Content

States and school systems have a great deal of flexibility about the information they require in an IEP. Some states and school systems have chosen to include in the IEP additional information to document their compliance with other state and federal requirements. (Federal law requires that school districts maintain documentation to demonstrate their compliance with federal requirements.) Generally speaking, extra elements in IEPs may be included to document that the state or school district has met certain aspects of federal or state law, such as:

- holding the meeting to write, review, and, if necessary, revise a child's IEP in a timely manner;
- providing parents with a copy of the procedural safeguards they have under the law;
- placing the child in the least restrictive environment; and
- obtaining the parents' consent.

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#### IEP Forms in Different Places

While the law tells us what information must be included in the IEP, it does *not* specify what the IEP should look like. No one form or approach or appearance is required or even suggested. Each state may decide what its IEPs will look like. In some states individual school systems design their own IEP forms.

Thus, across the United States, many different IEP forms are used. What is important is that each form be as clear and as useful as possible, so that parents, educators, related service providers, administrators, and others can easily *use* the form to write and implement effective IEPs for their students with disabilities.

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#### The IEP Team Members

By law, certain individuals must be involved in writing a child's Individualized Education Program. These are:

- · the child's parents;
- at least one of the child's special education teachers or providers;
- at least one of the child's regular education teachers (if the student is, or may be, participating in the regular education environment);
- a representative of the school system;
- an individual who can interpret the evaluation results;
- representatives of any other agencies that may be responsible for paying for or providing transition services (if the student is 16 years or, if appropriate, younger);
- the student, as appropriate, and
- other individuals who have knowledge or special expertise about the child.

Note that an IEP team member may fill more than one of the team positions if properly qualified and designated. For example, the school system representative may also be the person who can interpret the child's evaluation results.

These people must work together as a team to write the child's IEP. A meeting to write the IEP must be held within 30 calendar days of deciding that the child is eligible for special education and related services.

Each team member brings important information to the IEP meeting. Members share their information and work together to write the child's Individualized Education Program. Each person's information adds to the team's understanding of the child and what services the child needs.

**Parents** are key members of the IEP team. They know their child very well and can talk about their child's strengths and needs as well as their ideas for enhancing their child's education. They

can offer insight into how their child learns, what his or her interests are, and other aspects of the child that only a parent can know. They can listen to what the other team members think their child needs to work on at school and share their suggestions. They can also report on whether the skills the child is learning at school are being used at home. (See the information at the end of this section about parents' possible need for an interpreter.)

**Teachers** are vital participants in the IEP meeting as well. At least one of the child's **regular education teachers** must be on the IEP team if the child is (or may be) participating in the regular education environment. The regular education teacher has a great deal to share with the team. For example, he or she might talk about:

- · the general curriculum in the regular classroom;
- the aids, services, or changes to the educational program that would help the child learn and achieve; and
- strategies to help the child with behavior, if behavior is an issue.

The regular education teacher may also discuss with the IEP team the supports for school staff that are needed so that the child can:

- advance toward his or her annual goals;
- be involved and progress in the general curriculum;
- participate in extracurricular and other activities; and
- be educated with other children, both with and without disabilities.

Supports for school staff may include professional development or more training. Professional development and training are important for teachers, administrators, bus drivers, cafeteria workers, and others who provide services for children with disabilities.

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#### Extra Information: The Regular Education Teacher as Part of the IEP Team

Appendix A of the federal regulations for Part B of IDEA answers many questions about the IEP. Question 24 addresses the role of the regular education teacher on the IEP team. Here's an excerpt from the answer:

"...while a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not (depending upon the child's needs and the purpose of the specific IEP team meeting) be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting. For example, the regular education teacher who is a member of the IEP team must participate in discussions and decisions about how to modify the general curriculum in the regular classroom to ensure the child's involvement and progress in the general curriculum and participation in the regular education environment.

"Depending upon the specific circumstances, however, it may not be necessary for the regular education teacher to participate in discussions and decisions regarding, for example, the physical therapy needs of the child, if the teacher is not responsible for implementing that portion of the child's IEP.

"In determining the extent of the regular education teacher's participation at IEP meetings, public agencies and parents should discuss and try to reach agreement on whether the child's regular education teacher that is a member of the IEP team should be present at a particular IEP meeting and, if so, for what period of time. The extent to which it would be appropriate for the regular education teacher member of the IEP team to participate in IEP meetings must be decided on a case-by-case basis."

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The child's **special education teacher** contributes important information and experience about how to educate children with disabilities. Because of his or her training in special education, this teacher can talk about such issues as:

- how to modify the general curriculum to help the child learn;
- the supplementary aids and services that the child may need to be successful in the regular classroom and elsewhere;
- how to modify testing so that the student can show what he or she has learned; and
- other aspects of individualizing instruction to meet the student's unique needs.

Beyond helping to write the IEP, the special educator has responsibility for working with the student to carry out the IEP. He or she may:

- work with the student in a resource room or special class devoted to students receiving special education services;
- team teach with the regular education teacher; and
- work with other school staff, particularly the regular education teacher, to provide expertise about addressing the child's unique needs.

Another important member of the IEP team is the *individual who can interpret what the child's evaluation results mean* in terms of designing appropriate instruction. The evaluation results are very useful in determining how the child is currently doing in school and what areas of need the child has. This IEP team member must be able to talk about the instructional implications of the child's evaluation results, which will help the team plan appropriate instruction to address the child's needs.

The *individual representing the school system* is also a valuable team member. This person knows a great deal about special education services and educating children with disabilities. He or she can talk about the necessary school resources. It is important that this individual have the authority to commit resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

The IEP team may also include additional *individuals with knowledge or special expertise about the child.* The parent or the school system can invite these individuals to participate on the team. Parents, for example, may invite an advocate who knows the child, a professional with special expertise about the child and his or her disability, or others (such as a vocational educator who has been working with the child) who can talk about the child's strengths and/or needs. The school system may invite one or more individuals who can offer special expertise or knowledge

about the child, such as a paraprofessional or related services professional. Because an important part of developing an IEP is considering a child's need for related services (see the list of related services at the end of this section), related service professionals are often involved as IEP team members or participants. They share their special expertise about the child's needs and how their own professional services can address those needs. Depending on the child's individual needs, some related service professionals attending the IEP meeting or otherwise helping to develop the IEP might include occupational or physical therapists, adaptive physical education providers, psychologists, or speech-language pathologists.

When an IEP is being developed for a student of transition age, *representatives from transition service agencies* can be important participants. (For more information about transition, see the information provided at the end of this section.) Whenever a purpose of meeting is to consider needed transition services, the school must invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. This individual can help the team plan any transition services the student needs. He or she can also commit the resources of the agency to pay for or provide needed transition services. If he or she does not attend the meeting, then the school must take alternative steps to obtain the agency's participation in the planning of the student's transition services.

And, last but not least, the **student** may also be a member of the IEP team. If transition service needs or transition services are going to be discussed at the meeting, the student must be invited to attend. More and more students are participating in and even leading their own IEP meetings. This allows them to have a strong voice in their own education and can teach them a great deal -about self-advocacy and self-determination.

#### \*\*\*\*\*\*

#### Will Parents Need an Interpreter in Order to Participate Fully?

If the parents have a limited proficiency in English or are deaf, they may need an interpreter in order to understand and be understood. In this case, the school must make reasonable efforts to arrange for an interpreter during meetings pertaining to the child's educational placement. For meetings regarding the development or review of the IEP, the school must take whatever steps are necessary to ensure that parents understand the meetings—including arranging for an interpreter. This provision should help to ensure that parents are not limited in their ability to participate in their child's education because of language or communication barriers. Therefore, if parents need an interpreter for a meeting to discuss their child's evaluation, eligibility for special education, or IEP, they should let the school know ahead of time. Telling the school in advance allows the school to make arrangements for an interpreter so that parents can participate fully in the meeting.

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#### Transition Services

Transition refers to activities meant to prepare students with disabilities for adult life. This can include developing postsecondary education and career goals, getting work experience while still in school, setting up linkages with adult service providers such as the vocational rehabilitation agency—whatever is appropriate for the student, given his or her interests, preferences, skills, and needs. Statements about the student's transition needs must be included in the IEP after the student reaches a certain age:

- Transition planning, for students beginning at age 14 (and sometimes younger)—involves
  helping the student plan his or her courses of study (such as advanced placement or vocational
  education) so that the classes the student takes will lead to his or her post-school goals.
- Transition services, for students beginning at age 16 (and sometimes younger)—involves providing the student with a coordinated set of services to help the student move from school to adult life. Services focus upon the student's needs or interest in such areas as: higher education or training, employment, adult services, independent living, or taking part in the community.

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#### **Related Services**

A child may require any of the following related services in order to benefit from special education. Related services, as listed under IDEA, include (but are not limited to):

- Audiology services
- Counseling services
- Early identification and assessment of disabilities in children
- Medical services
- Occupational therapy
- Orientation and mobility services
- Parent counseling and training
- Physical therapy
- Psychological services
- Recreation
- Rehabilitation counseling services
- School health services
- Social work services in schools
- Speech-language pathology services
- Transportation

If a child needs a particular related service in order to benefit from special education, the related service professional should be involved in developing the IEP. He or she may be invited by the school or parent to join the IEP team as a person "with knowledge or special expertise about the child."

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#### Writing the IEP

To help decide what special education and related services the student needs, generally the IEP team will begin by looking at the child's evaluation results, such as classroom tests, individual tests given to establish the student's eligibility, and observations by teachers, parents, paraprofessionals, related service providers, administrators, and others. This information will help the team describe the student's "present levels of educational performance" -in other words, how the student is currently doing in school. Knowing how the student is currently performing in school will help the team develop annual goals to address those areas where the student has an identified educational need.

The IEP team must also discuss specific information about the child. This includes:

- the child's strengths;
- the parents' ideas for enhancing their child's education;
- the results of recent evaluations or reevaluations; and
- how the child has done on state and district-wide tests.

In addition, the IEP team must consider the "special factors" described between the lines below. It is important that the discussion of what the child needs be framed around how to help the child:

- advance toward the annual goals;
- be involved in and progress in the general curriculum;
- participate in extracurricular and nonacademic activities; and
- be educated with and participate with other children with disabilities and non-disabled children.

#### \*\*\*\*\*

### **Special Factors To Consider**

Depending on the needs of the child, the IEP team needs to consider what the law calls special factors. These include:

- If the child's *behavior* interferes with his or her learning or the learning of others, the IEP team will consider strategies and supports to address the child's behavior.
- If the child has *limited proficiency in English*, the IEP team will consider the child's language needs as these needs relate to his or her IEP.
- If the child is blind or visually impaired, the IEP team must provide for instruction in Braille or the
  use of Braille, unless it determines after an appropriate evaluation that the child does not need
  this instruction.
- If the child has communication needs, the IEP team must consider those needs.
- If the child is deaf or hard of hearing, the IEP team will consider his or her language and communication needs. This includes the child's opportunities to communicate directly with

classmates and school staff in his or her usual method of communication (for example, sign language).

■ The IEP team must always consider the child's need for assistive technology devices or services.

For more information about these special factors, see §300.346, presented in Attachment A.

Based on the above discussion, the IEP team will then write the child's IEP. This includes the services and supports the school will provide for the child. If the IEP team decides that a child needs a particular device or service (including an intervention, accommodation, or other program modification), the IEP team must write this information in the IEP. As an example, consider a child whose behavior interferes with learning. The IEP team would need to consider positive and effective ways to address that behavior. The team would discuss the positive behavioral interventions, strategies, and supports that the child needs in order to learn how to control or manage his or her behavior. If the team decides that the child needs a particular service (including an intervention, accommodation, or other program modification), they must include a statement to that effect in the child's IEP.

#### **Deciding Placement**

In addition, the child's *placement* (where the IEP will be carried out) must be decided. The placement decision *is* made by a group of people, including the parents and others who know about the child, what the evaluation results mean, and what types of placements are appropriate. In some states, the IEP team serves as the group making the placement decision. In other states, this decision maybe made by another group of people. *In all cases, the parents have the right to be members of the group that decides the educational placement of the child.* 

Placement decisions must be made according to IDEA's least restrictive environment requirements—commonly known as LRE. These requirements state that, to the maximum extent appropriate, children with disabilities must be educated with children who do not have disabilities.

The law also clearly states that special classes, separate schools, or other removal of children with disabilities from the regular educational environment may occur only if the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

What type of placements are there? Depending on the needs of the child, his or her <u>IEP</u> may be carried out in the regular class (with supplementary aids and services, as needed), **in** a special class (where every student in the class *is* receiving special education services for. some or all of the day), in a special school, at home, in a hospital and institution, or in another setting. A school system may meet its obligation to ensure that the child has an appropriate placement available by:

· providing an appropriate program for the child on its own;

- · contracting with another agency to provide an appropriate program; or
- utilizing some other mechanism or arrangement that is consistent with IDEA for providing or paying for an appropriate program for the child.

The placement group will base its decision on the IEP and which placement option is appropriate for the child. Can the child be educated in the regular classroom, with proper aids and supports? If the child cannot be educated in the regular classroom, even with appropriate aids and supports, then the placement group will talk about other placements for the child.

#### After the IEP is Written

When the IEP has been written, parents must receive a copy at no cost to themselves. The IDEA also stresses that everyone who will be involved in *implementing* the IEP must have access to the document. This includes the child's:

- regular education teacher(s);
- special education teacher(s);
- related service provider(s) (for example, speech therapist); or
- any other service provider (such as a paraprofessional) who will be responsible for a part of the child's education.

Each of these individuals needs to know what his or her specific responsibilities are for carrying out the child's IEP. This includes the specific accommodations, modifications, and supports that the child must receive, according to the IEP.

#### Parents' Permission

Before the school can provide a child with special education and related services for the first time, the child's parents must give their written permission.

#### Implementing the IEP

Once the IEP is written, it is time to carry it out—in other words, to provide the student with the special education and related services as listed in the IEP. This includes all supplementary aids and services and program modifications that the IEP team has identified as necessary for the student to advance appropriately toward his or her IEP goals, to be involved in and progress in the general curriculum, and participate in other school activities. While it is beyond the scope of this guide to discuss in detail the many issues involved in implementing a student's IEP, certain suggestions can be offered.

 Every individual involved in providing services to the student should know and understand his or her responsibilities for carrying out the IEP. This will help ensure that the student receives the services that have been planned, including the specific modifications and accommodations the IEP team has identified as necessary.

- Teamwork plays an important part in carrying out the IEP. Many professionals are likely to be involved in
  providing services and supports to the student. Sharing expertise and insights can help make everyone's
  job a lot easier and can certainly improve results for students with disabilities. Schools can encourage
  teamwork by giving teachers, support staff, and/or paraprofessionals time to plan or work together on
  such matters as adapting the general curriculum to address the student's unique needs. Teachers,
  support staff, and others providing services for children with disabilities may request training and staff
  development.
- Communication between home and school is also important. Parents can share information about what
  is happening at home and build upon what the child is learning at school. If the child is having difficulty
  at school, parents may be able to offer insight or help the school explore possible reasons as well as
  possible solutions.
- It is helpful to have someone in charge of coordinating and monitoring the services the student receives.
   In addition to special education, the student may be receiving any number of related services. Many people maybe involved in delivering those services. Having a person in charge of overseeing that services are being delivered as planned can help ensure that the IEP is being carried out appropriately.
- The regular progress reports that the law requires will help parents and schools monitor the child's
  progress toward his or her annual goals. It is important to know if the child is not making the progress
  expected-or if he or she has progressed much faster than expected. Together, parents and school
  personnel can then address the child's needs as those needs become evident.

#### Reviewing and Revising the IEP

The IEP team must review the child's IEP at least once a year. One purpose of this review is to see whether the child is achieving his or her annual goals. The team must revise the child's individualized education program, if necessary, to address:

- the child's progress or lack of expected progress toward the annual goals and in the general curriculum;
- information gathered through any reevaluation of the child;
- information about the child that the parents share:
- information about the child that the school shares (for example, insights from the teacher based on his or her observation of the child or the child's class work):
- the child's anticipated needs; or
- other matters.

Although the IDEA requires this IEP review at least once a year, in fact the team may review and revise the IEP more often. Either the parents or the school can ask to hold an IEP meeting to

revise the child's IEP. For example, the child may not be making progress toward his or her IEP goals, and his or her teacher or parents may become concerned. On the other hand, the child may have met most or all of the goals in the IEP, and new ones need to be written. In either case, the IEP team would meet to revise the IEP.

\*\*\*\*\*\*

Look at Those Factors Again!

When the IEP team is meeting to conduct a review of the child's IEP and, as necessary, to revise it, members must again consider all of the factors discussed under the section "Writing the IEP." This includes:

- the child's strengths,
- the parents' ideas for enhancing their child's education,
- the results of recent evaluations or reevaluations, and
- how the child has done on state and district-wide tests.

The IEP team must also consider the "special factors," as listed in that section.

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#### What If Parents Don't Agree With the IEP?

There are times when parents may not agree with the school's recommendations about their child's education\_ Under the law, parents have the right to challenge decisions about their child's eligibility, evaluation, placement, and the services that the school provides to the child. If parents disagree with the school's actions—or refusal to take action—in these matters, they have the right to pursue a number of options. They may do the following:

- Try to reach an agreement. Parents can talk with school officials about their concerns and try to reach an
  agreement. Sometimes the agreement can be temporary. For example, the parents and school can agree
  to try a plan of instruction or a placement for a certain period of time and see how the student does.
- Ask for mediation. During mediation, the parents and school sit down with someone who is not involved in
  the disagreement and try to reach an agreement. The school may-offer mediation, if it is available as an
  option for resolving disputes prior to due process.
- Ask for due process. During a due process hearing, the parents and school personnel appear before an
  impartial hearing officer and present their sides of the story. The hearing officer decides how to solve the
  problem. (Note: Mediation must be available at least at the time a due process hearing is requested.)
- File a complaint with the-state education agency. To file a complaint, generally parents write directly
  to the SEA and say what part of IDEA they believe the school has violated. The agency must resolve
  the complaint within 60 calendar days. An extension of that time limit is permitted only if exceptional
  circumstances exist with respect to the complaint.

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#### **OSEP Monitoring**

The U.S. Department of Education's Office of Special Education Programs (OSEP) regularly monitors states to see that they are complying with IDEA. Every two years OSEP requires that states report progress toward meeting established performance goals that, at a minimum, address the performance of children on assessments, drop—out rates, and graduation rates. As part of its monitoring, the Department reviews IEPs and interviews parents, students, and school staff to find out:

- whether, and how, the IEP team made the decisions reflected in the IEP;
- whether those decisions and the IEP content are based on the child's unique needs, as determined through evaluation and the IEP process;
- whether any state or local policies or practices have interfered with decisions of the IEP team about the child's educational needs and the services that the school would provide to meet those needs; and
- whether the school has provided the services listed in the IEP.

This guide is intended to help states and school districts write IEPs that comply with IDEA. Writing effective IEPs is a very important first step in improving educational results for children with disabilities.

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#### Summary

The IEP is the comerstone of special education. Writing and implementing an effective IEP involves many people, many different steps, and collaborative decision making.

The information provided in this guide about the IEP has been fairly general. To help you get better acquainted with the various parts of the IEP, a sample IEP form is presented on the next pages. The sample IEP form includes space for all of the information that an IEP must contain under federal law. (Remember that IEP forms in your area may require more information that maybe of value to the student and those implementing the IEP) The different parts of the sample are paired with direct quotes from the law, so that you can easily see:

- how the law defines what type of information goes into the various parts of a child's IEP, and
- how this information goes together to create an educational program for a particular child.

Attachment A presents the IDEA's regulations for "Individualized Education Programs" (§§300.340-300.350). Under §300.347, where "IEP content" is described, we have included

additional information primarily from Appendix A and Attachment 1 of the regulations. This information can be very useful in developing a fuller understanding of what type of information is important to capture about a child in the IEP.

PEER Fact Sheet Curriculum & Instruction Fact Sheet

prepared by Cheryl M. Jorgensen, Ph.D.

#### Introduction

Curriculum and instruction can be designed to make sure that students with disabilities have meaningful opportunities to achieve the high academic standards established for all children. Instead of beginning with a separate curriculum for students with disabilities, educators can design lessons based on the general curriculum and standards.<sup>1</sup> "Right from the start" instruction can be planned to ensure that the general curriculum is accessible and challenging for a diverse group of students. For the purposes of this paper, the writer uses the following:

Curriculum usually means the content or subject matter or the ideas, skills, and concepts that students are taught in a particular subject area, such as math or language arts. Curriculum describes what students learn.

Instruction generally describes the teaching methods and learning activities that a teacher uses to present the curriculum. A teacher has many different ways to teach students a given topic or unit. Instruction describes how educators teach the curriculum<sup>2</sup>.

#### What does the law say?

The Individuals with Disabilities Education Act (IDEA) provides that all children with disabilities be appropriately involved in and progress in the general curriculum, and that, to the maximum extent appropriate, children with disabilities must be educated with their non-disabled peers. The law presumes that children with disabilities can learn in regular classrooms with their non-disabled peers. The Individualized Education Program (IEP) must include an explanation of the extent, if any, to which a child will not be educated with his/her non-disabled peers. Generally, regardless of the educational setting, the child's curriculum and IEP goals and objectives are based on the general curriculum and standards. Research has shown that regular education classrooms can use instructional methods that enable students with all types of disabilities to participate and excel in the general curriculum.<sup>2</sup>

#### Stages of curriculum and instruction design<sup>3</sup>

Over the past 30 years, the way curriculum is delivered to students with disabilities is generally thought to have evolved through four distinct stages. Schools throughout the country may be at any stage in the process of designing curriculum and instruction to meet the needs of all students.

Stage I Students with disabilities receive specialized curriculum and instruction in a special education classroom. E.g., Students with disabilities in a separate, self-contained classroom work on a specialized reading program or receive resource-room assistance in math.

Stage 2 Students with disabilities receive specialized curriculum and instruction in a general education classroom. e.g., in a chemistry lab, a student with disabilities washes test tubes in the back of the room.

Stage 3 Students with disabilities participate in the general curriculum in regular education classrooms, with

individualized accommodations, modifications, and supports. E.g., In a fourth-grade classroom where students are writing reports on lowa history, a student with disabilities makes a collage of historic buildings and personalities.

Stage 4 Students with disabilities participate in the general curriculum in regular education classrooms where a range of instructional strategies are used to address the various needs of students with and without disabilities. Therefore, students with disabilities participate in the general curriculum without individualized

accommodations. E.g., In a tenth-grade science classroom studying cell structure and function, the teacher provides a variety of materials (e.g., text books suitable for a range of reading levels, videos, computer simulation programs, plastic models, and pop-up picture books), uses a variety of teaching methods, and asks students to show their knowledge using their learning style of choice.

Curriculum and instruction in Stage 4 schools are designed to promote equity and excellence in education. In Stage 4 schools, students with disabilities are able to master skills and content in the general curriculum subject areas. From the onset, a variety of instructional approaches are used to enable all students to meet high standards in different ways. Units and lessons are designed with student diversity in mind.

Clearly, teachers and schools at Stage 4 hold a very different set of beliefs from those held by traditional schools, and those beliefs are directly reflected in how curricula and instruction are designed. These beliefs<sup>4</sup> generally include:

- 1. All students have value and unique gifts to offer their school.
- 2. All students can think and learn.
- 3. Diversity is to be embraced and celebrated.
- 4. Effective teaching for students with disabilities is good teaching for all students.
- 5. Students learn best when studying interesting and challenging topics that they find personally meaningful.
- 6. Students learn best when they are actively and collaboratively learning with their classmates and their teacher.
- 7. Students differ in the ways that they most effectively learn and show what they know.

In addition, the author characterizes Stage 4 schools as believing that schools should be held accountable for all children achieving to high standards. Based on these beliefs, curricula, instruction, and standards in Stage 4 schools differ dramatically from those in schools whose personnel do not share these beliefs. The table at right displays characteristics of curricula developed to challenge and value all students.

## How can parents advocate to restructure curriculum and instruction for their child?

- 1. Learn about the general curriculum and standards for your child, request copies of the curriculum and standards for your child's grade. Begin with the general curriculum offered to all students as the basis for writing your child's IEP goals and objectives.
- 2. Ask the school to arrange for a complete evaluation. You may ask that the evaluation include an assessment of your child's learning strengths and weaknesses, including a description of the kinds of learning activities and teaching styles that will promote success. Request a reading assessment from a qualified teacher.
- 3. Ensure that specific learning conditions, such as participation in cooperative learning groups, are incorporated into the short-term objectives of the IEP.

- 4. Choose teachers whose teaching styles best match your child's needs. You might also request to interview or observe teachers to identify an appropriate match, or enlist the help of an administrator to assign your child to a teacher whose teaching style is suited to your child. Remember that, one regular education teacher, under certain circumstances, must be a member of the Team.
- 5. Make sure that the IEP team includes in the IEP the modifications and supports your child needs to be involved and make progress in the general education curriculum, as required by IDEA. Examples of modifications are: personalizing the way students show what they know (e.g., multiple choice instead of lists necessary accommodations, as required by IDEA. essay); providing assistive technology, such as an augmentative communication system; individualizing the amount of work required; or assigning a report instead of an oral presentation. The IEP should also specify the supports and services school personnel will need to teach your child effectively, and the learning environment your child needs to progress in the general curriculum.
- 6. Make sure your child's IEP addresses how s/he will participate in statewide or district wide assessments, and

#### How can parents advocate for system wide curriculum and instruction reform?

- 1. Learn about curriculum design, ability grouping, tracking, and effective instruction.
- 2. Request information about the design of curriculum and instruction from state or local groups (e.g., Parent Training and Information (PTI)<sup>5</sup> centers, Protection and Advocacy (P&A) organizations, legal services, universities, or state departments of education). Request assistance in working with your school community.
- Join local committees or task forces addressing school reform issues in your community.
- 4. Contact your state department of education and request participation in development of the State Improvement Grants, if your state is applying for this grant.
- 5. Participate in your school's site-based council or run for a position on your local school board.
- 6. Participate in your school's PTA and join professional groups (e.g., Association for Supervision and Curriculum Development, TASH, the national PTA). Encourage curriculum and instruction reform to address the needs of all students. Talk about these issues with the parents of your child's classmates.
- 7. Monitor state and district wide assessment results to ensure that students with disabilities fully and fairly participate and that test results are used to improve curriculum and instruction.

#### Endnotes

The PEER Information Brief, "Raising Standards of Learning: Students with Disabilities and Standards-Based Education" discusses content and performance standards which most states have established as part of standards-based education reform. As used in PEER Fact Sheet, content standards are general descriptions of the knowledge and skills students should gain in various subject areas. Performance standards are definitions of what students have to know and be able to do to show that they are proficient in the skills and knowledge.

<sup>2</sup> McGregor, G. and Vogelsberg, R.T. (1998). Inclusive Schooling Practices: Pedagogical and Research

# IEP Sequence the Pyramid to Success



#### **Assessments**

Assessments consists of standardized tests and must be non-discriminatory. Tests should consider language issues and vision. Assessments must define strengths and areas of weakness. Student work samples, observations, parent, teacher, student reports, grades, as well as any outside tests must all be considered at the meeting.

#### Which then drives



2.

#### Goals and Benchmarks

Goals and benchmarks should be based on assessments and focus on the students strengths and interests. Goals are specific information about what the students current level of performance is, what the student will achieve, and how will instruction will support the mastery of the goal and the goal must be measurable.

#### Which then drives



3

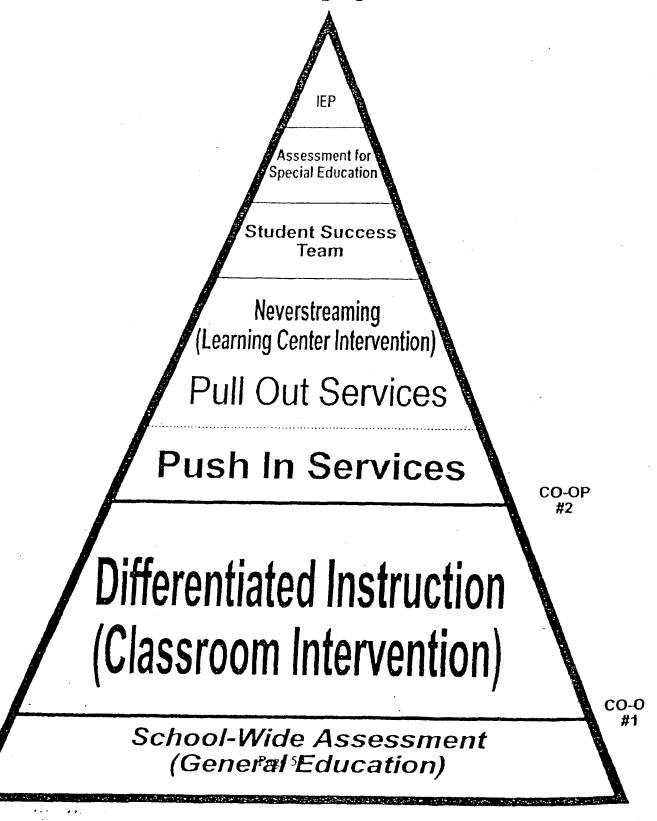
#### Placement and levels of service

Placement and levels of service decisions are made on the basis of what will be needed to make appropriate progress towards the goals. The law requires a continuum of services, but focuses placement in the least restrictive environment (LRE). This means the student should to the greatest extent appropriately be with their non-disabled peers. The level of service should be written into the IEP very specifically and include who will deliver the service, where the service will be delivered, how long, one to one or group, and how frequently.

The Individuals with Disabilities Act (IDEA) is the Federal special education law which requires; students with disabilities receive a free and appropriate public education (FAPE) in the least restrictive environment (LRE). This law establishes a process with a sequence designed to ensure that students with disabilities receive and individual education program (IEP) based on their specific needs, and that they not be segregated from their non-disabled peers. A successful IEP is developed by; first an assessment which defines the students needs completely, which then drives secondly the development of goals and benchmarks, which then drives thirdly supports, services, and placement.

LC 2004

# Student Support Model



## IEP Individual Education Program

#### **Annual Goals**

These are a statement(s) of what a student with a disability can be expected to accomplish in one year.

### Criteria for Developing Appropriate Goals

- Review the student's past achievement
- Consider the student's present level of educational performance when estimating what, can be expected in a years time or the duration of the IEP
- Identify the category of instruction for each deficit area. These may include the following:

Social Skills
Communication
Leisure/Recreation Skills
Vocational Skills Personal
Management
Academics
Perceptual Skills Behavioral
Skills, and
Physical Skills

- Annual goals must be written to address an area of weakness identified in the Present Level of Educational Performance. There must be a direct correlation between the annual goal(s) and the present level of educational performance.
- Annual goals reflect answers to the question: What do we want the student to be able to do in a year's time? The goals must reflect knowledge of the student's current functioning in each skill area, the next sequence of skills in that area and some estimate of the student's rate of learning. If the learning rate is underestimated and the student achieves the annual goal(s) earlier, the new goal(s) can be added. Priorities are established in choosing goals based upon the student's physical limitations, age, time left in school, and expectations for the future. Thus, the annual goals in the IEP are:
  - stated in terms of measurable, and observable behaviors

• inclusive of the major deficit areas identified in the present level of educational performance: communication, behavior, academics, socialization, self-help, perceptual-motor, gross-motor, vocational, related service.

Who will achieve and with what level of support?
What skill or behavior, how will it be measured and by whom? Specifically what are the present level?
Specifically what levels will skill increase to?
Where and in what setting or under what conditions?

- based on the student's present level of functioning
- realistic in terms of the student's physical and cognitive abilities
- prioritized on the basis of the students age and amount of time left in school
- prioritized to meet the student's need to help the student live independently

Note: the goals written should generalize across programs and be written to meet the unique needs of the student. Although there are no regulations regarding the content of the IEP goals, they should NOT be written to address specific curriculum or course requirements in general education classes, and they should NOT be written to the specific programs in which the student will participate.

School:	Special Education Department LONG-TERM GOALS & SHORT - TERM INSTRUCTIONAL OBJECTIVES	TIONAL Page	of Pages
Present Level of Performance	LONG-TERM GOAL AND SHORT-TERM INSTRUCTIONAL OBJECTIVES (minimum of two short-term objectives for each long-term goal) Long-Term Goal Code/Area:	EVALUATION PROCEDURES	PROGRESS
Area of Need:	Long-Term Goal:	Date:    Teacher Evaluation/Observation   Curriculum Based Testing   Pro-Post Baseline Data   Other   Post Evaluation:	Mastered     Progress. Continue     Limited Progress,     Continue     Limited Progress,     Discontinue     Discontinue
Present Levels of Performance: (Narative description of assessment results and functional level and how disability affects involvement and progress in the general curriculum)	į	Date:  I Teacher Evaluation/Observation Curriculum Based Testing Pre-Post Baseline Data Other Post Evaluation:	☐ Mastered ☐ Progress, Discontinue ☐ Limited Progress, Continue ☐ Limited Progress, Discontinue ☐ No Progress, Continue ☐ No Progress, Continue ☐ No Progress, Continue
	2. Short-Term Instructional Objective/Benchmark	Date:    Teacher Evaluation/Observation   Curriculum Based Testing   Pre-Post Baseline Data   Other   Post Evaluation:	☐ Mastered ☐ Progress, Continue ☐ Limited Progress, Continue ☐ Limited Progress, Discontinue ☐ No Progress, Continue ☐ No Progress, Continue ☐ No Progress, Continue
-	3. Short-Term Instructional Objective/Benchmark	Date:  Teacher Evaluation/Observation Curriculum Based Testing Pore-Post Baseline Data Other Post Evaluation:	Mastered     Progress, Continue     Limited Progress.     Continue     Limited Progress.     Limited Progress.     Discontinue     No Progress, Continue     No Progress, Continue

\*Areas related to suspected disability to be addressed as applicable: Reading, Communication Skills, Study Skills, Computation Skills, Perceptual Motor Coordination. Health and Hygiene.
Copy Distribution: White - Special Education Department Student MIS File; Pink - Parent; Yellow - School Site Student File; Golden Rod - Appropriate Support Staff or Regular Education Teacher
SE-8, Long-Term Goals and Short-Term Instructional Objectives Form, revised 6/26/00



# MT. DIABLO UNIFIED SCHOOL DISTRICT SPECIAL EDUCATION

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# INDIVIDUALIZED EDUCATION PROGRAM (IEP)

1936 Carlotta Drive, Concord, CA 94519 Phone (925) 682-8000 or TDD 685-2962 FAX (925)687-3139 Community Advisory Committee (CAC) Parent Liaison (925)682-8000, x4297

IEP Date	:/	Initial		Triennial _	Stude	ent ID	
For Initia	I Placements Only	memm	Manifestation	Transition	Otnei		
	student received pre-re	ferral early inte	ervenina service in th	ne past two years?	□ Yes □	No	
Date of in	nitial referral for special	education ser	vices//_	-			
IEP	Last Annual IEP		Trier	nial Reevaluation			
DATA							
STUDENT	Last Name		Firs	t Name	В	irthdate	
DATA	School of Attendance	:e		Grade	Native Lan	guage	
	School of Residence	9		District of Reside	ence	Redesignated □ Ye	
	Attends Private Sch	ool	English	Learner D Yes	CELDT level	Redesignated □ Ye	
HOME DATA	Parent/Guardian			1	F 4	sed/ r Childrens Home	
	Address		Address			s 🗆 No	
	Ph:(hm)		Ph:(hm)				
	Ph:(wk)		Ph:(wk)				
	Ph:(cell)		Ph:(cell)				
	Native Language		Native Language	•			
LIGIBILITY	Primary Disability Co	de	Category				
	Secondary Disability	Code	Category				
	NOT Eligible fo	Special Educ	ation EXI	TING from SpEd (i	no longer eligib	le)	
, ! -	Current F	Proposed	Dates of Service		Duration	Location	
	***************************************						
	<del></del>		to				
		······	to		<del></del>		
	-		to				
	Physical Education:   General   Specially Designed   Adapted						
	AB3632 Eligible for Mo						
	Provider Daily	Weekly			puration(Numb	er of Minutes)	
	Frequency:Daily		MonthlyYear	· ——	Trootms-1	Desidential Treatmen	
	Additional Comments					_ Residential Treatmen	
	Supplementary aids an	id services to !	he provided to the c	hild or on behalf a	of the child and	program	
	modifications or suppo	rts for school	personnel.	illid of off benali o	ir the critic and	program	
	Description		ates of Service	Frequency	Duration	Location	
_	·		to	•			
-							
<u>-</u>							
ד	Transportation ☐ Yes	□ No		Particinatos i	in Workability	□ Yes □ No	
	Submit form if transport					iges 15 and up)	
	Check transportation co		C D	☐ Yes ☐ I	•	iges to and up)	
			·				
09/06	WHI	TE-CUM C	ANARY-MIS PINK	PARENT GOLDE	EN-TEACHER	•	

DISABILITY CODES, CATEGORIES AND ABBREVIATIONS

Code	Disability Category	Code	Disability Category
210	Mental Retardation (MR)	280	Other Health Impaired (OHI)
220	Hard of Hearing (HH)	281	Established Medical Disability (EMD)
230	Deafness (Deaf)	290	Specific Learning Disability (SLD)
240	Speech or Language Impairment (SLI)	300	Deaf Blindness (DB)
250	Visual Impairment (VI)	310	Multiple Disabilities (MD)
260	Emotional Disturbance (ED)	320	Autism (AUT)
270	Orthopedic Impairment (OI)	330	Traumatic Brain Injury (TBI)

SPECIALIZED ACADEMIC SERVICES CODES AND CATEGORIES

Code	Specialized Instruction Category	•
25	Part Time Specialized Academic Instruction (Pt. Sp. Inst.)	
30	Full Time Specialized Academic Instruction (Ft. Sp. Inst.)	

RELATED SERVICES CODES AND CATEGORIES

Code	Related Service Category (Old Code)	Code	Related Service Category (Old Code)
425	Adapted Physical Education (05)	715	Interpreter Services for the Deaf (15)
445	Assistive Technology Services (28)	415	Language and Speech (01)
720	Audiological Services (02)	450	Occupational Therapy (06)
535	Behavior Intervention Services (09)	730	Orientation and Mobility (03)
735	Braille Transcription (78)	890	Other Transition Services (18, 19)
515	Counseling and Guidance (10)	520	Parent Counseling (11)
540	Day Treatment (55)	460	Physical Therapy (06)
710	Deaf and Hard of Hearing Services	530	Psychological Services (10)
436	Health and Nursing - other services (17)	525	Social Work Services (13)
435	Health and Nursing - specialized (12)	740	Specialized Orthopedic Services – CCS (23)
350	Individual and Small Group Instruction (14)	725	Specialized Vision Services (07)
510	Individual Counseling (10)	830	Vocational /Career Education (16)
340	Intensive Individual Instruction (22)		, ,

Location	Abbreviation
Regular Education	Reg. Ed.
Regular Education w/Related Services	Reg. Ed./SS
Special Education	Sp. Ed.
District Special Education Center	Center
Non-Public School	NPS
County Class	COU
Residential School	Res. Sch.
Home/Hospital	H/H

Code	Transportation Eligibility
Α	Severely disabled.
В	Infant/Preschool, 0-5 year old.
С	Student's disability creates a safety risk.
D	Student assigned to a school other than school of residence
	and lives outside Board established walking distance.



## MT. DIABLO UNIFIED SCHOOL DISTRICT SPECIAL EDUCATION

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# INDIVIDUALIZED EDUCATION PROGRAM (IEP)

FAX (925)687-3139 Community Advisory Committee (CAC) Parent Liaison (925)682-8000, x4297

IEP DATE:		Student #		
	Vision Screening Date: Pass Fail	Hearing Screening Date: Pass Fail		
STATEWIDE TESTING AND REPORTING	District Standards Curriculum leading to Diploma CAT6/CST   Accommodations needed:   Yes   No If Yes, refer to the Matrix of Test Variations, Accommodations/Modifications and list those needed in Conference Notes.	Alternative Curriculum leading to Certificate CAPA  Level 1: (Gr. 2-11) Level 2: (Gr. 2-3) Level 3: (Gr. 4-5) Level 4: (Gr. 6-8) Level 5: (Gr. 9-11)		
	High School Exit Exam (CAHSEE)  Math: Pass Fail English: Pass Fail  Accommodations Needed: ☐ Yes ☐ No  If Yes, refer to the Matrix of Test Variations,  Accommodations/Modifications and list those needed in Conference Notes.	CELDT for English Language Learners Accommodations Needed: ☐ Yes ☐ No If Yes, refer to the Matrix of Test Variations, Accommodations/Modifications and list those needed in Conference Notes.		
	For 3, 4, 5 year old preschoolers only (Desired Results I DRDP DRDP Access Adaptations	Developmental Profile (DRDP)		
Strengths/Pret	ferences/Interests			
oes the stude	ent require assistive technology devices and/or services? ent require low incidence services, equipment and/or mater s (specify)	rials to meet educational goals?		
s the student b	olind or visually impaired?   No  Yes If "yes", will ins	struction in braille be provided? ☐ No ☐ Yes		
s the student d ommunication	leaf or hard of hearing?  No Yes If "yes", specify:	strategies, specialized instruction and mode of		
the student a ne IEP will be a	n English Learner?  No Yes If "yes", specify how addressed.	the student's level of English proficiency related to		
oes the studer	nt's behavior impede learning of self or others?   No I	☐ Yes (describe)		
yes, specify po	ositive behavior interventions, strategies, and supports			
Behavior Sup	oport Plan (BSP) attached	avior Intervention Plan (PBIP/Hughes Bill) attache		
. 09/06	WHITE - CUM CANARY - MIS PINIK - PAREN	VI GOLDEN-TEACHER		



# MT. DIABLO UNIFIED SCHOOL DISTRICT SPECIAL EDUCATION

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# INDIVIDUALIZED EDUCATION PROGRAM (IEP)

FAX (925)687-3139 Community Advisory Committee (CAC) Parent Liaison (925)682-8000, x4297

The following placement options were considered and ationale documented on conferences notes.  Regular Education Regular Ed. with Related/Support Services Special Education Setting SDC Center Non-Public School Residential School Home/Hospital Home  Academic Performance Social/Interactive Skills Communication Physical Movement/Participation Independent Functioning/Participation Ability to Follow the Discipline Rules
ationale documented on conferences notes.  Regular Education Regular Ed. with Related/Support Services Special Education Setting SDC Center Non-Public School Residential School Home/Hospital Home  Academic Performance Social/Interactive Skills Communication Physical Movement/Participation Independent Functioning/Participation Ability to Follow the Discipline Rules
Regular Ed. with Related/Support Services Special Education Setting SDC Center Non-Public School Residential School Home/Hospital Home  Academic Performance Social/Interactive Skills Communication Physical Movement/Participation Independent Functioning/Participation Ability to Follow the Discipline Rules
Social/Interactive Skills Communication Physical Movement/Participation Independent Functioning/Participation Ability to Follow the Discipline Rules
GULAR EDUCATION CLASS AND ACTIVITIES
tudents without disabilities: Phone FAX E-mail
or a prolonged period of time, and ssion. This regression, when coupled with the level of self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency and self-sufficiency
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or sent



# MT. DIABLO UNIFIED SCHOOL DISTRICT SPECIAL EDUCATION

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# INDIVIDUALIZED EDUCATION PROGRAM (IEP)

FAX (925)687-3139
Community Advisory Committee (CAC)
Parent Liaison (925)682-8000 - 4207

IEP DATE:/_/ Student Name _		Student #			
Programs and services will be provided wh scheduled services, excluding holidays, va	en the student is incations, and non-in	n attendance and consistent with the public sometructional days unless otherwise specified.	school calendar and		
IEP MEETING PARTICIPANTS					
		Parent/Guardian/Surrogate			
Parent/Guardian/Surrogate	Date	Parent/Guardian/Surrogate	Date		
LEA Representative/Admin. Designee	Date	Regular Education Teacher	Date		
Student	Date	Special Education Specialist	Date		
Additional Participant/Title					
Additional Participant Title	Date	Additional Participant/Title	Date		
Additional Participant/Title	// Date	Additional Participant/Title	// Date		
ARENT CONSENT (please initial areas of  participated in the development of					
I agree to all parts of the IEP.	_				
I agree with IEP, with the exception o					
I have received a copy of assessmen	·	·			
I have received a copy of Procedura		n the last year.			
I have received the Notice of IEP Me	•				
I understand that my child is not eligi					
I understand that my child is no longe		ial education.			
gnature below is to authorize and approve t	he IEP.				
gnature:  ☐ Parent ☐ Guardian ☐	Surrogate D A	Date / / / Adult Student	-		
gnature: ☐ Parent ☐ Guardian ☐	Surrogate D A	Date //// dult Student	-		
ident enrolled in private school by their pare rvice Plan.	ents: 🗆 No 🗆	Yes If yes, refer to Private School Service	es Individual		
09/06 WHITE - CUM	CANARY-MIS	PINK - PARENT GOLDEN - TEACHER			

#### What are related services?

Put simply, related services are any services which are necessary to help a student benefit from his special education program. The following definition is quoted from the current version of the federal regulations, but the list of related services also includes any new related services recently added by amendments to federal special education law [Title 20 United States Code (U.S.C.) Sec. 1401(22)]:

# 34 Code of Federal Regulations (C.F.R.) Sec. 300.16: Related Services

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

As a result of recent amendments to federal law, the definition has been expanded to include "orientation and mobility services". [See Title 20 U.S.C. Sec. 1401(22).] This term is not defined in either the statute or regulations at this time.

Existing Title 34 C.F.R. Sec: 300.16 furthers defines some of these services as follows: (1)

#### Audiology includes:

- (i) Identification of children with hearing loss;
- (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

- (iii) Provision of rehabilitative services, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;
- (iv) Creation and administration of programs for prevention of hearing loss;
- (v) Counseling and guidance of students, parents and teachers regarding hearing loss; and
- (vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) Counseling services, including rehabilitation counseling, means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) **Early identification** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- (4) Medical services means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.
- (5) Occupational therapy includes:
  - Improving, developing or restoring functions impaired or lost through illness, injury or deprivation;
  - (ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost;
  - (iii) Preventing, through early intervention, initial or further impairment or loss of function.
- (6) Parent counseling and training means assisting parents in understanding the special needs of their child and providing parents with information about child development.
- (7) Physical therapy means services provided by a qualified physical therapist.
- (8) Psychological services include:
  - Administering psychological and educational tests, and other assessment procedures;
  - (ii) Interpreting assessment results;

- (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- (iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
- Planning and managing a program of psychological services, including psychological counseling for children and parents.

#### (9) Recreation includes:

- (i) Assessment of leisure function;
- (ii) Therapeutic recreation services;
- (iii) Recreation programs in schools and community agencies; and
- (iv) Leisure education.
- (10) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
- (11) **School health services** means services provided by a qualified school nurse or other qualified person.

#### (12) Social work services in schools include:

- Preparing a social or developmental history on a handicapped child;
- (ii) Group and individual counseling with the child and family;
- (iii) Working with those problems in a child's living situation (home, school and community) that affect the child's adjustment in school; and
- (iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational pro gram.

#### (13) Speech pathology includes:

(i) Identification of children with speech or language disorders;

- (ii) Diagnosis and appraisal of specific speech or language disorders;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative disorders; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

#### (14) Transportation includes:

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts and ramps), if required to provide special transportation for a handicapped child.

#### The comment to this regulation states:

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a student with a disability to benefit from special education.

The comment to the regulation further makes clear that not all related services will be required for each individual child. Related services may be provided by persons from varying professional backgrounds. Not all such personnel will be directly employed by school districts; they may be provided by other public agencies or by contracts between school districts and private providers. However, in all cases the state education agency (generally through the local education agencies) is ultimately responsible for ensuring that related services are provided. [34 C.F.R. Sec. 300.600; California Education Code (Cal. Ed. Code) Secs. 56360, 56361, 56363.]

Although not specifically identified as a related service, federal law requires that districts ensure that assistive technology devices and/or services are available to special education students who need them as part of their special education or related services or as part of the supplemental aids and services used to assist them in being placed in the least restrictive environment. [34 C.F.R. Sec. 300308.] See Questions 38 to 41 below.

#### Peggy A. Burns

# Decision-Making About Special Needs Transportation: Are You Ready?

# I. A Quick Framework for Decision-Making in Special Needs Transportation

- A. Is the child IDEA eligible?
- B. Is the child Section 504 eligible?
- C. How is the transportation decision made? By whom?
  - ◆ IDEA Regs.: "In determining whether to include transportation in a child's IEP and whether the child needs to receive transportation as a related service, it would be appropriate to have at the IEP meeting a person with expertise in that area" (Appendix A, Q. 33)
  - Involvement of parent(s).

#### When? Using what criteria?

- Is transportation necessary because it would be provided to a non-disabled child under the same circumstances?
- Is transportation a related service? (Is it necessary to enable the child to access his/her special education services? IDEA; Is it necessary because failure to provide transportation would have the effect of limiting participation of a disabled student in the district's educational program or activity? Section 504)
  - How does the child's disability affect the child's need for transportation?
  - Does the child's disability prevent the child from using the same transportation provided to non-disabled children, or from getting to school in the same manner as non-disabled children?
  - Consider also child's age; the distance he/she must travel, and the nature of the route
    he or she would have to take if the child were to walk to school.

#### D. How should you transport?

- Extra equipment/personnel/scheduling needs?
- Review of assistive technology responsibilities.
- Presumption of integrated transportation.
- Pick-up and drop-off points (start with regular bus stop and only move beyond it to the extent the child's disability necessitates doing so.)
- Travel training?
- Equal opportunity: "take steps to provide nonacademic...services...in the manner necessary

to afford children with disabilities an equal opportunity for participation in those services..."

E. Review relationship between transportation and educational program; watch for impacts.

#### II. Transportation and the IEP Process

- A. The IEP Team: who's on it, and what do they do?
  - Who's on the team? Parents of the child; at least one regular education teacher; at least one special education teacher or provider, a school district representative' who is qualified to provide or supervise special education, and who is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources; and, at the discretion of either the parent or the school district, "other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate"; and, if

appropriate, the child. One of the team members must also be someone "who can interpret the instructional implications of evaluation results," but if one of the team members has that ability, he or she may serve in both roles.

- B. Involvement of transportation Sec. 300.344 of the Regulations provides that the agency may include at the IEP meeting related services personnel as appropriate. The final Regulations include an Appendix A comprised of useful questions and answers. The answer to question 30 of the Appendix states: "...[I]t is appropriate for [related services personnel] to be included if a particular related service is to be discussed as part of the IEP meeting." "In determining whether to include transportation in a child's IEP and whether the child needs to receive transportation as a related service, it would be appropriate to have at the IEP meeting a person with expertise in that area." (Emphasis added). Appendix A, Q. 33, Regulations.
- c. Which IEP team discussions should involve school transportation?
  - When student behavior is an issue.
  - The decision as to which school the student will attend.
  - Whether transportation will be provided as a related service.
  - The manner in which transportation will be provided.

#### III. When is Transportation a Related Service?

- Related services are to be provided "as required to assist a child with a disability to benefit from special education." Regulations, Sec. 300.24. Because school districts are mandated to provide FAPE, which includes related services, it is significant that among the specific related services listed in the law is transportation. In addition, the "F" (free) and "A" (appropriate) in FAPE apply to the level of transportation service required.
- "The term `related services' means **transportation** and such developmental, corrective, and other support services...as may be required to assist a child with a disability to benefit from special education." (Emphasis added.) Regulations, Sec. 300.24.
- It is important to note that transportation is not a related service under this definition unless it is "required to assist a child with a disability to benefit from special education." Transportation will, generally, be required if it is necessary to enable a special needs student to access services set forth in his or her IEP. Although this issue has been the subject of hearings and litigation, one consistent rule is that the determination as to when transportation is required is made on an individualized basis by a child's staffing team.
- Question 33 of Appendix A asks, "Must a public agency include transportation in a child's IEP as a related service?" The answer responds, in part, that whether transportation is a related service will depend upon "how the child's disability affects the child's need for transportation, including determining whether the child's disability prevents the child from using the same transportation provided to non-disabled children, or from getting to school in the same manner as non-disabled children....It should be assumed that most children with disabilities receive the same transportation services as non-disabled children." While the Regulations reflect the need to consider the relationship between the child's disability and his need for transportation in determining whether transportation is a related service, it is also wise to consider the student's age; the distance he/she must travel; and the nature of the route he or she would have to take if the child were to walk to school. Mere parental inconvenience is not relevant to the decision.

◆ Letter to Smith, 23 IDELR 344, written by the Office of Special Education Programs (OSEP) on July 12, 1995, stated:

"In all instances, each student's need for transportation as a related service and the type of transportation to be provided are issues to be discussed and decided during the evaluation process and individualized education program (IEP) meeting, and the transportation arrangements agreed upon should be included in the disabled student's IEP. If the IEP team determines that transportation is a related service, including it in the IEP for a particular student because it is required to assist that student to benefit from special education, the public agency must provide transportation to the student at public expense."

#### IV. How Should you Transport?

- A. Presumption of integrated transportation The Commentary to § 300.24 of the Regulations states, "It is assumed that most children with disabilities will receive the same transportation provided to non-disabled children, unless the IEP team determines otherwise. However, for some children with disabilities, integrated transportation may not be achieved unless needed accommodations are provided to address each child's unique needs. If the IEP team determines that a disabled child requires transportation as related service in order to receive FAPE, or requires accommodations or modifications to participate in integrated transportation with non-disabled children, the child must receive the necessary transportation or accommodations at no cost to the parent. This is so, even if no transportation is provided to non-disabled children."
- B. Pick up and drop off points The "how" of necessary transportation will also involve determining whether the child will be picked up and dropped off at the regular bus stop, at an alternative bus stop, at the curb, or at his door step. Decision-making should start with the regular bus stop, and only move beyond it to the extent the child's disability necessitates doing so. If it is not appropriate for the child to be picked up from and dropped off at his bus stop, the IEP team should "inch" closer to his door-step in thinking about the child's needs. Too often, staffing teams assume that if the child cannot access the bus stop, he must be picked up at his door, or, at least, his curb. That is only necessary if there is no reasonable point closer to the bus stop (including the entrance to his development) where he might go.
- c. Travel training be aware of the addition of "travel training" to the definition of "special education." Regulations, § 300.26 (a)(2)(ii) and (b)(4). "Travel training" is defined as instruction to enable those students with disabilities who require it to "develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community)."
- D. Equal opportunity: avoiding the Office for Civil Rights The term "nonacademic services," used in the Regulations, specifically includes transportation. Regulations, § 300.306. The Regulations provide that school districts must "take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities." This provision has not changed from the previous version of the Regulations. Cases in the last couple of years have addressed issues like length of ride, impact on academic schedule, before and after school

programs, late activity buses, schools of choice, and transportation to nonpublic schools. The bottom line for analysis of these issues continues to be the need first to identify the level of service provided to non-disabled students. Then, the IEP team must ensure that it does no less for students with disabilities. Districts seldom have to do more.

## Questions and Answers on Serving Children with Disabilities Eligible for Transportation

#### November 2009

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the <u>Federal Register</u> on August 14, 2006, and became effective on October 13, 2006. Additional regulations were published on December 1, 2008 and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, advocacy organizations, and other interested parties with information regarding the requirements for serving children with disabilities eligible for transportation. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

The IDEA and its implementing regulations continue to address the transportation needs of children with disabilities. Transportation is a related service as defined by 34 CFR §300.34(c)(16) of the IDEA regulations and can include travel to and from school and between schools; travel in and around school buildings; and specialized equipment such as special or adapted buses, lifts, and ramps. A child's individualized education program (IEP) Team is responsible for determining both if transportation is required to assist a child with a disability to benefit from special education and related services, and how the transportation services should be implemented. The IDEA and the implementing regulations also include travel training in the definition of special education. Travel training is instruction that enables children with disabilities to develop an awareness of the environment in which they live, and to learn the skills necessary to move effectively and safely from place to place within that environment. Both transportation and travel training are important services IEP Teams should continue to consider when they plan for a child's postsecondary transition needs.

Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of the IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing

regulations, and other important documents related to the IDEA and the regulations are found at <a href="http://idea.ed.gov">http://idea.ed.gov</a>.

If you are interested in commenting on this guidance, please email your comments to OSERSguidancecomments@ed.gov and include Transportation in the subject of your email or write us at the following address: Patricia Guard, U.S. Department of Education, Potomac Center Plaza, 550 12<sup>th</sup> Street, SW, room 4108, Washington, DC 20202.

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#### A. General

Authority:

Transportation is included as a related service under the regulations in 34 CFR §300.34(a) and (c)(16). Travel training is included in the definition of special education in 34 CFR §300.39(a)(2)(ii), and is specifically defined in §300.39(b)(4).

**Ouestion A-1:** 

What transportation services are available for students eligible for special education and related services under the IDEA?

Answer:

Transportation is a related service and is defined in 34 CFR §300.34(c)(16). Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment such as special or adapted buses, lifts and ramps, if required to provide special transportation for a child with a disability.

**Question A-2:** 

Who determines whether transportation services are required and how those services should be implemented?

Answer:

The IEP Team is responsible for determining if transportation is required to assist a child with a disability to benefit from special education and related services, and how the transportation services should be implemented. The IEP should describe the transportation services to be provided, including transportation to enable a child with disabilities to participate in nonacademic and extracurricular activities in the manner necessary to afford the child an equal opportunity for participation in those services and activities to the maximum extent appropriate to the needs of that child. 34 CFR §§300.107 and 300.117.

The IDEA does not require LEAs to transport children with disabilities in separate vehicles, isolated from their peers. In fact, many children with disabilities can receive the same transportation provided to non-disabled children, consistent with the least restrictive environment requirements in 34 CFR §§300.114 through 300.120.

Additionally, special education can include travel training. Travel training is instruction that enables children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to develop an awareness of the environment in which they live, and to learn the skills necessary to move effectively and safely from place to place within that environment. 34 CFR §§300.39(a)(2)(ii) and 300.39(b)(4).

These services can be a fundamental component of the provision of a free appropriate public education (FAPE) that will assist children in preparing for employment and independent living in their communities. Therefore, IEP Teams should consider the need for both transportation and travel training when planning for a child's postsecondary transition needs.

The Federal Transit Administration funds and Easter Seals administers Project ACTION (Accessible Community Transportation in Our Nation), a national technical assistance center on accessible transportation, which provides training for schools, parents, and other service providers on the implementation of travel training (<a href="http://www.projectaction.org">http://www.projectaction.org</a>; 800-659-6428).

#### **Question A-3:**

If a child's IEP identifies transportation as a related service to be provided to the child, what are strategies that can be used to provide that service?

#### Answer:

Transportation as a related service may be provided through a variety of strategies. A child's IEP Team should consider the strategies that are most appropriate given each individual child's disability and needs.

The following examples of appropriate strategies may be helpful when IEP Teams consider how to provide transportation for children with disabilities:

- 1. Expanding the Ridership of Small Bus Routes and Integrating Children with Disabilities into General Education Bus Routes.

  School districts often provide door-to-door service for children with disabilities in a "small bus" vehicle that is separate from the school transportation used for other students. While this might be an appropriate strategy for supporting some children with disabilities, districts should explore options for integrating children with disabilities with nondisabled students, especially when the children with disabilities are in the same location and have the same schedule as children without disabilities. This option may require the utilization of a lift-equipped vehicle for the regular routes or the addition of a monitor or aide.
- 2. Using Aides on Buses. Many children with disabilities are able to ride the regular school bus with support provided by an aide who may be an instructional assistant or volunteer, based on State and local policy. Some LEAs also use other students to provide this service through a buddy system, based on State and local policy.

- 3. Bus Stop Monitors. For students who may need assistance with "going" to the bus stop or "waiting" at the bus stop independently, adding a bus stop monitor can be considered. Based on State and local policy, bus stop monitor positions may be filled by parents or community volunteers. Bus stop monitors will facilitate safe travel for all students.
- 4. *Positive Behavioral Support*. Recognizing that the school day begins at the bus stop is an important first step to ensuring that all students have a safe and positive experience. Many schools implement "positive behavioral support programs" that include the integration of behavioral strategies on the bus.

# Question A-4: Do the transportation provisions in 34 CFR §300.34(c)(16) mean that an LEA is responsible for transporting children with disabilities to and from the locations where the students receive special education and related services, even if the LEA has to redirect the transportation routes or provide an aide for safety?

Answer: Yes. If an IEP Team determines that a child with a disability requires special transportation arrangements or accommodations, including an aide for safety, the LEA must provide these services.

#### B. Duration of Travel and Time on Learning

Authority:

The term "school day" is defined in the regulations in 34 CFR §300.11(c).

**Question B-1:** 

If a child with a disability spends a significant amount of time being transported to and from school, as well as to and from another location to receive special education and related services, is the child entitled to receive additional school time to make up for the time lost in transportation?

Answer:

Neither Part B of the IDEA nor the regulations address the issue of the length of a school day. Determining the length of a school day is a decision left to the SEA. However, the IDEA defines school day as any day, including a partial day, that children are in attendance at school for instructional purposes. Additionally, school day has the same meaning for all children in school, including both those with and without disabilities. In general, a school day for a child with a disability should not be longer or shorter than a school day for general education students. However, if a child's IEP Team determines a child needs a shorter or extended school day in order to receive FAPE, then appropriate modifications should be incorporated into the IEP. However, these modifications must be based on the unique needs of the child, as determined by the IEP team, and not solely based on the child's transportation time.

#### C. Vehicle Requirements

Authority:

Transportation is included as a related service under the regulations in 34

CFR §300.34(a) and (c)(16).

**Question C-1:** 

When does the IDEA require climate-controlled transportation for children

with disabilities?

Answer:

Climate-controlled transportation is not explicitly required under the IDEA. However, if an IEP team determines that a child needs climate-controlled transportation to receive special education services, related services, or both, and the child's IEP specifies that such transportation is necessary, the LEA must provide this special transportation at no cost to the parents. Similarly, climate-controlled transportation is not required under section 504 of the Rehabilitation Act of 1973, as amended (Section 504) unless a child with a disability has an identified need for this transportation. See 34 CFR Part 104. However, the transportation of nondisabled children in climate-controlled buses, while children with disabilities are transported in separate buses that are not climate-

controlled, might raise issues of disability discrimination under Section

504.

#### D. Confidentiality

Authority:

Transportation is included as a related service under the regulations in 34 CFR §300.34(a) and (c)(16).

Question D-1:

What information should an LEA give to school bus drivers to ensure that the drivers understand the confidentiality protections of children who are transported?

Answer:

Each person, including a school bus driver, who collects or uses personally identifiable information concerning a child with a disability, must receive training or instruction about the State's policies and procedures protecting the confidentiality of such information under 34 CFR §300.123 and 34 CFR part 99.

Transportation providers play an integral role in the school lives of many children, including children with disabilities. Effective communication between schools and transportation providers is essential, including communication about transportation needs and potential problems of children with disabilities. To the extent appropriate, school personnel in LEAs should ensure that school bus drivers or other transportation providers are well informed about protecting the confidentiality of student information related to (1) the special needs of individual children with disabilities who ride on school buses with their general education peers, and (2) possible strategies and assistance that may be available to drivers (including the use of aides on buses).

#### E. Right to Transportation Outside of Normal School Hours

Authority:

Transportation is included as a related service under the regulations at 34 GEP 8300 34(a) and (a)(16)

CFR §300.34(a) and (c)(16).

**Question E-1:** 

When does a child with a disability have a right to transportation to and from school-related activities that occur outside of normal school hours, such as community service activities that are required by the school?

Answer:

When a child with a disability has a right to transportation to and from school-related activities that occur outside of normal school hours depends on whether the IEP Team has included transportation as a related service in the child's IEP to enable the child to benefit from special education and related services. If the IEP Team has made that determination, then it should include transportation for required after-school activities, such as community service activities that are required by the school, as well as for activities necessary to afford the child an equal opportunity to participate in extracurricular activities.

#### F. Children in Preschools

**Authority:** Transportation is included as a related service under the regulations in 34

CFR §300.34(a) and (c)(16).

Question F-1: When is an LEA obligated to provide transportation for a preschool child

with a disability between private day care and the child's preschool?

**Answer:** If the IEP Team determines that transportation is required to assist the

preschool child to benefit from special education, and includes

transportation as a related service on the child's IEP, the LEA would be responsible for providing the transportation to and from the setting where

the special education and related services are provided.

#### G. Reimbursement

**Authority:** 

Transportation is included as a related service under the regulations in 34

CFR §300.34(a) and (c)(16).

**Question G-1:** 

Must an LEA provide appropriate information and assistance to the parents of a child with a disability who are seeking reimbursement for mileage expenses for transportation the IEP Team included in the child's

IEP?

Answer:

Yes. If a child with a disability is receiving special education and related services and transportation is included in the child's IEP, the LEA must provide assistance needed by the parents to be reimbursed in a timely manner for the costs incurred in providing transportation.

#### H. Discipline

Authority:

Transportation is included as a related service under the regulations in 34 CFR §300.34(a) and (c)(1). Discipline procedures are found in the regulations in 34 CFR §§300.530 through 300.537.

**Question H-1:** 

If transportation is included in the IEP for a child with a disability who has documented behavioral concerns on the bus, but not at school, when may a school district suspend the child from the bus for behavioral issues and not provide some other form of transportation to and from school?

Answer:

If transportation is included in the child's IEP, a bus suspension must be treated as a suspension under 34 CFR §300.530 and all of the discipline procedures applicable to children with disabilities would apply. An LEA is not required to provide alternative transportation to a child with a disability who has been suspended from transportation for 10 school days or less unless the LEA provides alternative transportation to children without disabilities who have been similarly suspended from bus service. 34 CFR §300.530(d)(3).

If a child with a disability is suspended from transportation for more than 10 school days in the same school year, and transportation is included in the child's IEP, during any subsequent suspensions the LEA must provide services to the child to the extent required in 34 CFR §300.530(d). Generally, this means that the child must (1) continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP, and (2) receive as appropriate a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation(s) so that they do not recur.

Additionally, the suspension of a student with a disability from transportation may constitute a change of placement if a district has been transporting the student, suspends the student from the transportation as a disciplinary measure, and provides no other form of transportation. If a student is suspended from transportation for more than 10 consecutive school days, or is repeatedly suspended, and such suspensions constitute a pattern under 34 CFR §300.536(a)(2), a change of placement has occurred. In such situations, the LEA, parent, and relevant members of the IEP Team must determine whether the conduct was a manifestation of the child's disability, using the process described in 34 CFR §300.530(e). If the conduct is a manifestation of the child's disability, the IEP Team must take the steps outlined in 34 CFR §300.530(f)(1), and also must

return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530(f).

Regardless of the procedures discussed above, school personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child has taken any of the actions specified in 34 CFR §300.530(g) regarding weapons, illegal drugs, or the infliction of serious bodily injury.

#### **EXTENDED SCHOOL YEAR SERVICES**

Researched by: Connie Ajay

Elk Grove Autism Resource Group

Extended school year is not just an extension of time in school rather it is the inclusion of extended services designed for the particular child as part of that child's individual education program. The courts have definitely sent a message to the school districts that parents MUST be a part of the decision for placing a child in extended school year services (Reusch v. Fountain). The school districts may not arbitrarily decide whether a child requires ESY they must include the parent as well as the teacher. The school district may not use lack of personnel or availability of services as an excuse for not offering extended school year services. If there is no personnel or placement available they MUST provide outside options or reimburse the parent for their private placements. Extended school year services include any and all of the related services that your child receives during the school year, including speech services, occupational therapy, adaptive physical education, resource/learning center services.

IDEA identifies extended school year as:

#### Sec. 300.309 Extended School year services

- (a) General
  - (1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a) (2) of this section.
  - (2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Secs. 300.340300.350, that the services are necessary for the provision of FAPE to the child.
  - (3) In implementing the requirements of this section, a public agency may not
    - (i) Limit extended school year services to particular categories of disability, or
    - (ii) Unilaterally limit the type, amount, or duration of those services.
- (b) Definition. As used in this section, the term extended school year services means special education and related services that----
  - (1) Are provided to a child with a disability ---

- (i) Beyond the normal school year of the public agency;
- (ii) In accordance with the child's IEP; and
- (iii) At no cost to the parents of the child and;
- (iv) Meet the standards of the SEA. (Authority: 20 U.S.C. 1412 (a) (1))

The California State Composite of Laws also defines Extended School Year as the following:

#### EC 3043 Extended School Year:

Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program pursuant to subsection (1).

Note the highlighted section which indicates if the IEP team agrees that the child could benefit from extended school year then that documentation is not required.

The definition of extended school year only stipulates that the option be available to a child with a disability. IDEA does not state the qualifications necessary for a child to qualify for extended school year. The courts have provided some guidelines for the definition of a child who qualifies for extended school year services (Reusch v: Foutain, and Daniel Lawyer v. Chesterfield). To deny a child an extended school year would in essence deny a child a free and appropriate education.

Most parents are familiar with the regression and recoupment concept, meaning that if your child does not receive the services while off track or summer break they would regress or lose the skills taught to them and upon returning to school would require some recoupment time in order to relearn those skills lost. There are other factors that would also qualify for a child for extended school year. The criteria mentioned came from the court case of Reusch v. Foutain, U.S. Dist. Court Maryland. I would recommend that you take the time to review the case. It can be downloaded thru the Wrightslaw Website. The best way to understand IDEA is to see how the courts have interpreted the law thru case laws.

Regression and recoupment: The ARD Committee determines whether, without ESY (extended school year) services, there is a likelihood or substantial regression of critical life skills caused by the school break and a failure to recover those lost skills in a reasonable time following the school break. (This would mean that your child would lose time upon returning from school to review the skills he/she lost during the break).

**Degree of** progress: The ARD Committee reviews the student's progress towards IEP objectives on critical life skills and determines whether, without ESY services, the student's degree of progress toward those objectives will prevent the student from receiving some benefit from his/her educational program during the regular school year.

Emerging skills/breakthrough opportunities: The ARD Committee reviews all IEP objectives targeting critical life skills to determine whether any of these skills are at a breakthrough point. When critical life skills are at this point, the ARD Committee determines whether the interruption of instruction on those objectives is likely to prevent the student from receiving some benefit from his/her educational program during the regular school year without ESY services.

Interfering behavior(s): The ARD Committee determines whether any interfering behavior(s), such as stereotypic, ritualistic, aggressive or self-injurious behavior(s) targeted by IEP objectives have prevented the student from receiving some benefit from his/her educational program during the previous school year without ESY services or whether the interruption of programming which addresses the interfering behavior(s) is likely to prevent the student from receiving some benefit from his/her educational program during the next school year without ESY services.

Nature and/or severity of the disability: The ARD Committee determines whether, without ESY services, the nature and/or severity of the student's disability is likely to prevent the student from receiving some benefit from his/her educational program during the regular school year.

**Special Circumstances:** The ARD Committee determines whether, without ESY services, there are any special circumstances that will prevent the student from receiving some benefit from his/her educational program during the regular school year.

In Danny Lawyer vs. Chesterfield the judge also stipulated that since they were able to provide expert witnesses to indicate that for children who suffer from moderate to severe childhood autism, there is a small, but vital, window of opportunity in which they can effectively learn. Such period is generally between the ages of five and eight year old The Court concluded that it is extremely important that at this critical stage of development, Danny receive uninterrupted speech language therapy.

He also added other factors to interpret extended school year qualification:

#### **Cases interpreting Extended School Year**

#### Armstrong v. Kline, 476 F. Supp 583 (E.D. PA. 1979)

This case recognized ESY services as a right protected under IDEA. Of the criteria established in <u>Armstrong</u>, the regression/recoupment analysis is the one that causes the most confusion. Subsequent cases have defined how the criteria should be applied. First, the regression analysis should not be the sole basis for determining the necessity of ESY services. Second, proof of actual regression with significant recoupment time is not necessary to establish a child's need for ESY. The district can anticipate a child's need for such services based on the other criteria as mentioned in the latter part of this paper.

#### Crawford v. Pittman, 708 F.2d 1028 (5th Cir. 1983).

The court prohibited the state from using categorical limitations based on a single criterion, as means to evaluate a student's eligibility for ESY services. It also developed a comprehensive framework for analyzing the extent of a student's regression and recoupment. In addition to academic performance, the school must evaluate the following:

- \* Ability of child's parents to provide a educational structure at home;
- \* Availability of alternative resources;
- \* Areas of child's curriculum which need continuous attention:
- \* Child's vocational needs:
- \* Ability of child to interact with non-disabled children; and
- \* Whether the services are excessive considering the child's condition, as opposed to an integral part of the program.

#### Reusch v. Fountain, 872 F. Supp. 1421 (D. MD. 1994)

The Court held the student's substantive rights were violated when the school district based eligibility for ESY services on a single criterion, the extent of regression. It concluded that IDEA requires the state to use a multifaceted and individualized approach to determine a student's eligibility. The criterion established in <a href="mailto:Armstrong">Armstrong</a> was adopted in this case. The court, however, concluded these factors are not exclusive of other factors, and that any other factor relevant to the student's individual needs should also be considered.

References: Wrightslaw Website and Wrightslaw Special Education Law book

#### **READING**

#### Adapted Strategy 8: Adapted

#### Audiotape/CD/and or Books

Encourage use of audiotape books. Positive benefits of audiotape books are more likely to occur when texts and recordings have been adapted so student is cued to think strategically about the material. Follow these guidelines:

- Pre-read the chapter and identify parts of the text that need to be; a) read verbatim, b) those that can be explained or paraphrased, c) sections that can be skipped.
- Match text sections with corresponding study guide or end of the chapter questions.
- Determine cues to engage student throughout chapter (e.g., "Stop and answer study guide question # 2."
   Turn off tape recorder and write what you think was the most important thing just discussed.")
- Prepare students with a copy of text chapter that has been marked and an accompanying study guide.
   Chapter markings should indicate sections to read verbatim, paraphrased and skipped. Marks should also provide signals for students.
- Cue student to preview chapter and make responses (e.g., "The title of this chapter is <u>The Turning Point.</u>
  The unit we are studying is about the Civil War, so what do you think this chapter will be about? Turn off
  the recorder and write your response.")

(From: Deshler, D., Ellis E., Lenz, N. 1996. Teaching Adolescents with Learning Disabilities,)

#### **WRITTEN LANGUAGE Strategy 1: Use**

#### of Visual Organizers

Use simple, linear visual organizers. Webs and organizers with numerous lines and boxes can be confusing to an NLD student.

- Storyboards
- Idea Planner
- 5Ws Matrix

(Templates of these visual organizers can be found at the end of this handout.)

#### Strategy 2: Alternatives to Written Work

- Present book report in oral form.
- Lead a discussion on assigned topic.
- Conduct an interview with appropriate person.
- Assist in creating a group project.
- Create a rap song, advertisement or jingle.
- Create a video production.
  - Teach a lesson to the class or some else (parent, younger students).

#### WRITTEN LANGUAGE (continued) Franklin Homework Wiz

Spelling corrector instantly verifies or corrects kids' spelling errors Dictionary provides 40,00 easy-to-understand definitions

Handwriting guide forms letters and words on-screen, in print and cursive <a href="https://www.franklin.com">www.franklin.com</a>

Franklin Speaking Homework Wiz

Basically the same options, but it speaks the words and definitions aloud. Available at office supply stores and large drug stores or at <a href="https://www.franklin.com">www.franklin.com</a>

#### Franklin Webster's Spelling Corrector Plus

Small, professional-looking personal spell checker. www.franklin.com

#### HANDWRITING The Pencil

#### Grip by The Pencil Grip, Inc.

This grip promotes correct gripping and reduces stress on fingers. Available through <a href="https://www.pencilgrip.com">www.pencilgrip.com</a> or <a href="https://www.pencilgrip.com">www.allthewritenews</a>

#### #4 Pencils

Primary #4 pencils have a larger lead, which minimizes the tendency to push down so hard and constantly break it. Available through <a href="https://www.allthewritenews">www.allthewritenews</a>

#### **Erasable Dry Lighter Highlighter**

A highlighter that applies an erasable transparent film that works on most paper. Available through office supply stores.

#### Highlighter Tape

A removable alternative to permanent highlighter pens. Available through office supply stories

#### Loops and Other Groups: A Kinesthetic Writing System

A program that teaches students to write cursive using similar patterns of letters in the alphabet. Includes teachers manual, practice sheers and letter group charts. Available through www.allthewritenews

#### Handwriting Without Tears, Jan Olsen, OTR

A simple, developmentally based handwriting curriculum developed by an OT that teaches to all learning styles. Workbooks to teach pre-pencil readiness, printing and cursive handwriting. Available through <a href="https://www.hwtears.com">www.hwtears.com</a>, 301-983-8409

The "Other " Learning Disability: Understanding NLD Diagnostic Center-North

#### MATH

#### Strategy 1: Graduated Word Problem Sequence

Use graduated word problem sequence to teach student how to deal with extraneous information. Use this teaching sequence:

- 1. Word problems with single words or phrases
- 2. Word problems with sentences: numbers still aligned vertically
- 3. Word problems in traditional paragraph format
- 4. Word problems without extraneous information
- 5. Word problems with extraneous information
- 6. Students create their own word problems

(From: Deshler, D., Ellis, E., Lenz, N. 1996. Teaching Adolescents with Learning Disabilities)

#### Strategy 2: Verbal Word Problem Strategy

Model this strategy to teach NLD students how to cope with word problems. Place on cue card and encourage student to use on all word problems.

#### 1. Read the problem aloud.

Ask teacher to pronounce or define any words you don't know.

#### 2. Paraphrase the problem aloud.

- State important information, pay close attention to numbers.
  - Ask: 'What is asked?" or 'What am I looking for?"

#### 3. State the problem aloud.

Complete these statements:

"I have to...."
"I want to..."

#### 4. Hypothesize aloud.

Complete these statements:

"If I then I

"How many steps will I use to find the answer?"

#### 5. Estimate.

- Write the estimate and underline it.
- Say aloud, "My answer should be about."

#### 6. Calculate.

- Show the calculation and label the answer.
- Circle the answer.
- Say aloud, "Is my answer in the correct form?"

#### 7. Self-check.

• Refer to the problem and check each step to see if I'm right.

(From: Montague, C., Bos, C. 1986, The effect of cognitive strategy training on verbal math problem solving performance of learning disabled adolescents, *Journal of Learning Disabilities*.)

#### Strategy 3: Memory Tricks

Teach memory strategies to help student recall computation sequences.

Dracula's Mother Sucks Blood = Divide, Multiply, Subtract, Bring Down

Does McDonalds Sell Cheese Burgers= Divide, Multiply, Subtract, Check, Bring Down

# APPENDIX C Assistive Technology for the Learner with NLD

#### Keyboarding

#### Mavis Beacon Teaches Typing

Extensive digitized audio capabilities for dictation, help, lessons and features. Interactive program, analyzing the user's keyboard input on lessons and drills to generate future lessons. Improved, age-appropriate content lets you optimize learning with interesting materials. Grade 3 and up. MAC/WIN

Available from: The Learning Company, 800-825-4420 <a href="https://www.thelearningcompanyschool.com">www.thelearningcompanyschool.com</a>

#### UltraKey

Animated hands walk users through lessons.

Numerous customizing options such as key color coding, fonts, and analysis of outside text and optional text to speech audio.

Grade 3 and up.

MAC/WIN

Available from: Bytes of Learning, 800-465-6428

www.bytesoflearning.com

#### Keyboard Coach

A different type of keyboarding program that uses a multisensory process that teaches students how to connect neuro-motor patterning with brain-finger messages and visualization/color-coding as a way to master the keyboard.

Full computer Key Boarding Package

For more information and to download trial software:

www.thelearningstudio.com

#### **Word Prediction**

#### Co: Writer 4000

Supplies logical, grammatically appropriate word choices as the user types. Includes a 40,000 customizable word dictionary with auditory feedback. Can be used with most word processing programs.

MAC/WIN

Available from: Don Johnston, Inc., 800-999-4660

www.donjohnston.com

The "Other " Learning Disability: Understanding NLD Diagnostic Center-North

#### Assistive Technology for the Learner with NLD(cont.)

#### Soothsayer Word Prediction 3.0 (new version)

Built-in main dictionary of more than 11,000 of the most frequently used English words. Words presented according to frequency of use.

Authorable custom dictionaries containing special words or phrases.

Automatically speaks letters, words, sentences, and punctuation as typed. WINDOWS

Available from: Applied Human Factors, 888-243-0098

www.ahf-net.com

For further information about different types of word prediction, refer to: http://www2 , edc.org/NCI P

#### **Talking Word Processing**

#### Write:OutLoud 2.0

Text reading features are flexible and adaptable to the needs of many students. Speaks each letter, word, sentence or phrase as typed.

Will highlight word-by-word as it reads the text on the screen.

"Talking" spellcheck feature that will read the word in the sentence, speak the misspelled word, spell it, speak suggested words, and/or spell suggested words.

MAC/WIN

Available from Don Johnston, Inc., 800-999-4660

www.donjohnston.com

#### IntelliTalk II

Speech options and auditory Spell Check that reinforce letter and word recognition. Spell check lets students hear misspelled words and listen to alternative choices. On-screen palettes provide picture and text prompts to insert into documents. MAC/WIN

Available from: Intellitools, 800-899-6687

www.intellitools.com

#### TextHELP! Read and Write, Version 4

Reads text out loud with word predication.

Has talking spell checker with built in screen reader.

Homonyms are color coded to aid in proofing and correcting work. WINDOWS

Available from: TextHELP!, 1-888-333-9907

www.texthelp.com

The "Other " Learning Disability: Understanding NLD Diagnostic Center-North

#### Speech Recognition Software

#### Dragon NaturallySpeaking Professional 4.0 Speech

recognition software industry standard. Allows user to dictate naturally into the computer.
WINDOWS

Available from Dragon Systems, Inc., 800-437-2466 www.dragonsystems.com

 To read about speech recognition and students with learning disabilities, go to the Boston Children's Hospital Speaking to Write Project website, www.edc.org/spk2wrt

#### Math

#### Math Pad

Functions as an electronic worksheet that allows students to solve basic addition, subtraction, multiplication and division problems directly on the computer. Especially helpful for students who have difficulty lining up columns on paper. Grades K-2 MAC/WIN

Available from: Intellitools, 800-899-6687

www.intellitools.com

#### • Math Pad Plus: Fractions and Decimals

Functions as an electronic worksheet and offers higher level computation. Four basic operations, fractions, decimals and story problems. Problems can be viewed as pie charts, fraction bars or decimal grids. Grades 3-5 MAC/WIN

Available from: Intellitools, 800-899-6687

www.intellitools.com

#### Access to Math

Autogenerates math worksheets to match student's needs.

Target specific problem sets for student practice, worksheets can be completed on-screen or off the computer for addition, subtraction, multiplication and division.

Speech feedback for on-screen problem-solving.

MAC

Available from Don Johnston, Inc., 800-999-4660

www.donjohnston.com

The "Other " Learning Disability: Understanding NLD Diagnostic Center-North

# Intervention Guidelines for the NLD Learner

Language		Suggested Interventions
	ssets:	ouggested filter veritions
	Generally average speech & language development	> Encourage continued language development.
	Verbally adept with adults	> Adults can model appropriate social/language skills in interactions.
	Good receptive/expressive vocabulary	Allow student to be "vocabulary expert" in classroom.
	Strong skills in rote, learned information	Assure that student has opportunities to demonstrate his knowledge to show evidence of his competence to peers.
	Good verbal memory	Call on student to recall details in lesson.
0	Good phonetic analysis	> Allow student to be "expert" in phonetic analysis.
Deficits:		
	Impaired verbal output Too much Too little	Teach differences between speaker & listener roles. (Strategy 3: Refer to Appendix A)
	Uses language to "talk through" tasks Talks out loud in class	<ul> <li>Assure that teacher understands why he is "talking."</li> <li>Teach to use a quiet voice, gradually only moving his lips.</li> <li>Student can move to another area of room.</li> <li>Set up "Private Office" area available for student with NLD and other students.</li> </ul>
	Literally interprets figurative language	<ul> <li>Use explicit language whenever possible.</li> <li>Avoid use of; metaphors, similes, multiple-meaning words, idioms,</li> </ul>
ב	Difficulty understanding slang, sarcasm	<ul> <li>sarcasm, slang, indirect orders.</li> <li>If figurative language is used in literature and/or explanations, always explain what it means.</li> <li>Use pictures if possible.</li> </ul>
<b>3</b>	Difficulty understanding incongruities in spoken language	<ul> <li>Demonstrate or show the literal/nonliteral meanings. (e.g., "Raining cats and dogs." draw a picture of the literal interpretation to show that it is impossible.)</li> <li>Verbally highlight language similarities, differences, connections and generalizations.</li> <li>Help student to interpret abstract questions.</li> <li>"Can you show me?" really means, "Show me."</li> <li>"Are you ready?" really means, "You should be ready."</li> <li>Monitor language content on tests.</li> </ul>

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#### Page 2 Language (cont.) Suggested Interventions Difficulty understanding > Explicitly explain when an inference might be made, why inferences in spoken and what it means. language Misunderstands rules of > Teach conversational skills. conversational exchange Topic: Introduction, maintenance, appropriateness Tum taking: Listener/speaker Speech functions: Convinces, persuades, offers support, gathers information, etc. Speech pleasantries: Greetings, farewells, thank yous, apologies, compliments Speech prosody sounds > Tape record student and discuss prosody. > Practice phrases using different intonation (He is here. versus He is unusual here.). **Suggested Interventions** Visual-Spatial-Perceptual Skills Assets: □ Adequate visual Student is "expert" in finding details. discrimination skills **Deficits:** Poor visual memory Carefully consider all copying tasks. ☐ Impaired visual perception See interventions on reading nonverbal cues (Strategy 1: and processing Appendix A). ☐ Impaired spatial Carefully consider academic demands. perceptions and relations Teach strategies to get from place to place. List directions sequentially. Practice with student repeatedly using language to talk through directions. Point out visual markers verbally.

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If using a map, simplify as much as possible and rely on words,

Release early from class to allow student enough time to find his

Allow extra time for student to get to locker and classes. Allow student to move through hall during non-passing times.

way to next class, lunchroom, restroom, etc.

Eliminate negative consequences for tardiness.

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rather than directions or visuals.

#### Visual-Spatial-Perceptual Skills (cont.)

- Difficulty synthesizing visual parts into a whole
- Difficulty with visual-motor Integration

Difficulty using visualization

# Higher Level Thinking Skills

#### Assets:

- Relies on systems of rules and procedures for problem solving
- ☐ Can follow a "script" or "menu"

#### Deficits:

- ☐ Misses the "whole picture"
- Difficulty solving and adapting to novel, complex problems
   Problem solving
   Transitions

## **Suggested Interventions**

- Monitor reading comprehension.
- Explicitly teach social rules ((Strategy 2: Appendix A).
- Monitor written assignments.
- Refer to suggested interventions in Handwriting.
- Monitor students' participation in P.E. and how student is able to handle sports that require a high level of visual-motor integration, such as ball sports.
- Assist student in learning strategies on how to get from place to place (refer to previous suggestions).
- In writing tasks, give student a picture or illustration to write about rather than asking him to visualize a scene.
- Gradually assist student in learning how to "think in pictures."

### **Suggested Interventions**

- Use consistent rules in the classroom and be sure rules apply to all students.
- > Consider whether student would benefit from social scripting or use of an individual schedule.
- Monitor understanding in the classroom, such as themes, classroom discussions, reading comprehension.
- > Teach student strategies to cope with transitions.
- Warn of approaching transitions.
- Highlight changes in schedule.
- Pre-plan for field trips (Parent can take student to destination prior to actual trip).
- Tell student about assemblies, substitutes, etc.
- Allow student to remove himself from event or situation.
- Designate a "safe place" and plan for reentry.
- Plan and practice routines for transitions.
- Give verbal cues prior to transitions.
- Give student his own schedule to check and modify.

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# Higher Level Thinking Skills (cont.)

- ☐ Difficulty engaging in spontaneous cause/effect reasoning, hypothesis testing or appreciation of informational feedback
- \_\_\_\_Does not learn from mistakes in social situations
- \_\_\_\_Unable to intuit rules in problem solving
- \_\_\_\_Unable to utilize organizational strategies
- Limited cognitive flexibility

Poor working memory

# **Suggested Interventions**

- Explicitly teach rules of social interactions (refer to Strategy 2: Appendix A).
- > IEP team should assist in selecting teachers who will help student in successful problem solving.
- Have a "Home Base" available for student to go to when overwhelmed.
- Use WHERE strategy to help student understand social errors (refer to Strategy 6: Appendix A0.
- > Teach organizational skills.
  - Teach use of three ring binder with designated folders for each subject.
  - Help student to color code binders, books, folders, etc.
  - Encourage use of a writing utensil container (zippered pouch, box at desk).
  - Teach how to use assignment notebook, worksheet or planner. Use the schoolwide planner if available.
  - Allow use of student buddy to aid in organization.
  - · Teach student to use a digital watch with alarm
  - Encourage use of locker organizers available at office supply stores.
  - Designate time for cleaning of desk, backpack, locker.
  - Implement checklists of school tasks, materials.
  - Encourage student to consider whether an electronic planner would be useful.
  - Cell phones often have calendars and built-in alarms.
  - If "homework hotline" is available, teach student how to access the needed information.
  - Some teachers put the nightly homework assignment on their voice mail so students can check it from home.
- Monitor verbal directions/instructions.
  - Use sequential language in directions (1 st, 2nd, last).
  - · Chunk directions.
  - Avoid extra information in directions.
  - Break long instructions into manageable segments.
- > Tape-record directions to homework so student can take home and listen.
- > Assign a "buddy" who can remind student of next step.
- Encourage student to "self-talk" through directions as a task is completed.

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#### **Higher Level** Suggested Interventions Thinking Skills (cont.) Poor working memory Monitor student's comprehension. (continued) Check on the first few items of a worksheet or assignment to assure comprehension. Rephrase the direction with similar language. Relate new information to old information ("Remember when..."). Ask student to restate direction. Ask student to speculate or expand on the information that was presented. Clarify by asking yes/no questions ("Is it > Teach student to self-monitor own listening comprehension by understanding when and how to ask the right clarification questions. "Could you talk more slowly?" "What do you mean?" "Could you tell me a different way?" "I don't know what that word means." Sensory-Integration/Motor **Suggested Interventions** Skills Assets: Good at simple. Student may be able to become proficient in desired sport, repetitive motor skills art activity, hobby. Handwriting can improve with practice and motivation Deficits: Limited motor exploration Encourage exploration of pliable and stuffed toys. as toddler/preschooler Verbally guide through play with toys. Kid-proof house. Difficulty with self-help Use simple modifications. skills as young child Clothing Writing utensils Larger manipulatives Encourage independence. Impaired sensory Consider OT intervention. integration

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#### Sensory-Integration/Motor Skills (cont.)

- Poor visual-motor integration
- ☐ Impaired fine motor functioning
- Poor coordination for gross motor tasks
- Poor balance
- Limited definition of personal body space/definitions

#### Social

#### Assets:

- Desires social relationships
- ☐ Can learn social scripts

# **Suggested Interventions**

- ➤ Monitor copying tasks and writing requirements (refer to **Handwriting**).
- Monitor participation in art class.
- > Reduce motor requirements.
- > Monitor student's ability to participate in PE.
- Consider APE referral.
- > Encourage participation in individual sports.
  - Swimming
  - Martial arts
  - Horseback riding
- > Use a chair with arms or weighted chair.
- > Allow student to sit in "stadium chair" when sifting on floor.
- Explicitly teach student how to honor personal space (refer to Strategy 1: Appendix A).
- ➤ Use a carpet remnant to keep student in place during floor time activities.
- > "Lounge Lizard" chair for floor time activities.

# **Suggested Interventions**

- Teach student how to use appropriate social scripts with peers.
  - Determine appropriate words for student to use by listening to peer's social language use.
  - Develop scripts, as needed for individual students.
     ("That's a nice you have." "Can I play with you?").
  - Practice in structured settings.
  - Role play in different places.
  - Discuss successes and failures.
  - Discuss how to monitor and change scripts depending on social situation.
  - Monitor student's script use in social situations.

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#### Suggested Interventions Social (cont.) Deficits: Preschool Years Integrate with regular education peers. Difficulty with peer Prepare for changes and new situations by: interactions Difficulty separating from Gradually acclimate the child to new situations. Verbally give adequate warning, allow for questioning. caregiver Difficulty with new situations and transitions **Elementary Years** Discuss specific social situations where people need to "use" and Misinterprets or misses "read" nonverbal cues well to be successful (i.e., meeting nonverbal communication Uses facial expressions and someone new, having a serious discussion, etc.) body language that don't > Teach nonverbal rules. (Strategy 1: Appendix A) match Tone, volume, rate of voice Eye contact seems Facial expressions "unnatural" Body language including gestures, posture Physical boundaries, touch Difficulty with physical Objector (dress, jewelry, hairdo, hygiene) boundaries may cause social problems Peer interactions are very Videotape social situations (on the playground, in the difficult classroom, in community, at home) and use these to May be teased analyze nonverbal communication. Left out of social situations Teach effective ways for student to cope with teasing. (Strategy 5: Appendix A) Refer to books by S. Nowicki in reference list. Involve student in structured social skill training. □ Social problem solving and Teach social rules explicitly and verbally. (Strategy 2: self monitoring skills are Consider starting a "Lunch Bunch" group that would give limited students a safe place to meet and be social. Help student to understand his/her social error. Validate what the student did using constructive and supportive language. Together determine what went wrong. Together brainstorm an alternative for next time. Avoid blaming or reprimands. Use the "talk-aloud" strategy to model how student can learn to self-question and self-monitor his social behavior. (Strategy 4: Appendix A)

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#### Page 8 Social (cont.) Suggested Interventions ☐ May be overly familiar with ➤ Teach "stranger danger." strangers > Teach student to question the motives of others. May prefer the company of Gradually help student to spend more time with peers. adults Initially, give student a job to complete during recess. · Ask peer buddy to accompany student during part of recess. Middle/High School Years: Misunderstands nuances of > Teach student how to "code switch" the knowledge that we gender roles know that different styles of speech and language are used with different people. (Friend vs. principal, older student vs. younger student, police vs. familiar teacher, etc). ☐ May be seen as rude or > Ensure that all school staff understand the student's disrespectful. disability. ☐ May be slow to date and interact > Encourage involvement in clubs and groups that match socially student's areas of interest (Science Club, Chess Club, ☐ May have one or two good Drama Club etc.) friends Enlist parent's assistance in involving student in socially ☐ May have greater acceptance appropriate community activities (church groups, Scouting, due to larger variety in peer computer classes, etc.). group Enroll in social skills group (private or through school). Encourage NLD student to find other students who have similar interests (i.e., Star Trek, rock bands, etc.). Adulthood: May have problems with Encourage active involvement in support groups, NLDA. intimacy and marital issues Refer to Reference list. □ Continues to seem "unusual" Several NLD adults talk about how they have found friends socially in sports fan clubs-they instantly have something to talk about with others. Other adults have become involved in volunteering. Some adults have joined community-acting groups as actors or stagehands. Some adults meet people of opposite sex through dating clubs with group activities.

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### **Emotional**

#### Assets:

- Desires social experiences and friends
- □ Has capacity for empathy
- Can be eager to please
- Capable of emotional bonding with family and others
- Responsive to the rapeutic approaches

#### **Deficits:**

#### Preschool Years

- May need explanations and redirections from caregivers to maintain safety
- ☐ Can have intense temper tantrums
- ☐ Family/caregivers may feel "controlled" by child and distance selves

# Suggested Interventions

> Desire to be social may help student overcome difficulties.

- > Remain watchful.
- > Provide redirections and explanations in a calm, nonjudgmental tone of voice.
- > Weather tantrums; do not overreact.
- > Assist caregivers in understanding who the child is and how the child manipulates environment for comfort.
- > Encourage caregivers to attend parenting classes.

#### Elementary Years

- ☐ Frustration with academics may led to emotional outbursts
- ☐ Anger with social failures may lead to behavioral difficulties
- ☐ May show signs of:
- Anxiety
- Depression
- Inattention
- Obsessive behavior

- ➤ Use specific, positive reinforcement ("You read that whole page. That was great!"); pair with nonverbal social reinforcements (smile, high-fives).
- > Clearly state desired behavior.
- > Point out what is right, not wrong.
- Use question probes to determine exactly what student meant by his statements.
- ""I'm not doing this." might mean "I don't know what to do. " or "This is too confusing."

#### Avoid:

- Criticism
- Ultimatums
- Abstract phrasing

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#### **Emotional** (cont.) Suggested Interventions Middle/High School Years ☐ May become more socially Place student in positive cooperative learning situations isolated Plan groups so that student with NLD is placed with good role ■ May become very anxious models who understand his/her difficulties. and depressed (especially if Use strengths of student (i.e., not "scribe"). NLD is undiagnosed) > Develop prearranged strategy for student to exit classroom when frustrated or anxious (i.e., get a drink of water). > Teach student relaxation strategies (stress balls, worry beads, yoga techniques) Adulthood ☐ May experience severe bouts Student may need therapeutic intervention. of depression > Medication may be helpful, typically antidepressants. > Watch workload. Make sure all school staff understands NLD characteristics and how they are manifested in this student. Monitor closely if depressed. > Continued psychotherapy, possibly in a group setting Medication if necessary. Encourage involvement in support groups, NLDA. Academic Suggested Interventions READING Assets: Student is "sound-out" expert." ☐ Good decoding skills Allow student to be cross-age tutor to younger students. ☐ Recognizes details in text Student is assigned to find important details in cooperative learning May read profusely about groups. topics of interest > Use desired reading as an incentive for undesired work completion. Deficits: Teach how to read for main idea. Refer to Appendix B. ☐ Difficulty with higher level Use part-to-whole teaching. Refer to Appendix B. reading comprehension > Teach inferencing skills. Refer to Appendix B. > Teach comprehension strategies. Refer to Appendix B. > Teach RAP strategy for comprehension. Refer to Appendix B. ➤ Use pre-reading strategies to "pre-set" student. Refer to Appendix B. Provide consumable texts student can write in > Teach to highlight.

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Interventions for the NLD Lea	arner Page 11
	<ul> <li>Highlight information in books with erasable highlighter.</li> <li>Allow extra time for reading assignments.</li> <li>Encourage use of audio taped books. Positive benefits of audio taped books are more likely to occur when texts and recordings have been adapted so student is cued to think strategically about the material. Refer to Strategy 7: Appendix B.</li> </ul>
<ul> <li>Difficulty coping with distracting visuals and too much print on page</li> </ul>	<ul> <li>Assist student to deal with too much print and visual distraction by:         <ul> <li>Removing distracting visuals on copy machine.</li> <li>Enlarging print.</li> <li>Using "window frame" or Post-It notes.</li> <li>Model and teach use of SNIPS strategy to aid in the interpretation of visuals in textbooks, lessons. Refer to Strategy 8: Appendix B.</li> </ul> </li> </ul>
☐ Slow reading negatively affects work completion	<ul> <li>Monitor quantity of assigned reading.</li> <li>Teach student to break up continuous reading into manageable chunks.</li> </ul>
WRITTEN LANGUAGE	Suggested Interventions
Assets: ☐ Good phonetic speller ☐ Does well with free forms of writing, journals/creative writing	<ul> <li>Student can be the "spelling expert" in the class.</li> <li>Teach efficient use of: <ul> <li>Word processor spell check</li> <li>Franklin Speller</li> <li>Encourage positive writing experiences through these activities student is more comfortable with.</li> <li>Provide linear visual organizers for story organization.</li> <li>Storyboard. Refer to Templates.</li> <li>5Ws Matrix. Refer to Templates.</li> </ul> </li> </ul>
Deficits: □ Difficulty copying from board	<ul> <li>Eliminate all unnecessary copying.</li> <li>Provide outline of notes or partially completed outline.</li> <li>Allow copying in steps, writing only a small part at a time</li> <li>Make sure student can see what needs to be copied.</li> <li>Allow student to copy only main idea of notes.</li> <li>Student buddy takes notes on NCR paper.</li> <li>Student is able to make copies of notes taken by another student on copy machine.</li> </ul>

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U Difficulties with expository writing (book reports, research papers, etc.)	<b>9</b>
Difficulty organizing long term assignments into manageable amounts	<ul> <li>Teach student to use calendars or assignment sheets to plan steps and break into manageable chunks.</li> <li>Monitor demands and modify as needed.</li> <li>Provide in-class time to get started on assignments.</li> </ul>
HANDWRITING	Suggested Interventions
Assets:  With practice, handwriting can improve to functional level	<ul> <li>Encourage student to improve handwriting with incentives.</li> <li>Collaborate with parent regarding types of incentives.</li> </ul>
Deficits: ☐ Very poor handwriting skills	<ul> <li>Experiment with different pencil grips.</li> <li>Avoid use of thin, easily torn paper.</li> <li>Assistive technology</li> <li>Keyboarding. Refer to Appendix C.</li> <li>Word prediction. Refer to Appendix C.</li> <li>Talking word processing software. Refer to Appendix C.</li> <li>Speech recognition software. Refer to Appendix C.</li> </ul>
<ul><li>Unable to stay within boundaries of worksheets</li></ul>	<ul> <li>Enlarge worksheets.</li> <li>Determine which parts of worksheet are most important for student to complete.</li> </ul>
☐ Difficulty with test answer sheets; results may not reflect student's knowledge	<ul> <li>Alternate testing methods.</li> <li>Avoid timed tests.</li> <li>Allow additional time.</li> <li>Allow student to write on test.</li> <li>Avoid visually distracting test answer sheets.</li> <li>Modify matching so student matches with choices written on index cards. Modify bubble answer sheets by enlarging, allowing student to respond orally.</li> </ul>

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	Interventions for the NLD Lear	1 age 15
	☐ Cannot write fast efficiently enough to take notes	<ul> <li>Provide copy of teacher's notes for student to highlight.</li> <li>Allow student to tape lectures.</li> <li>Provide note taker (in middle/high school, note taker eams community serve credits).</li> <li>Provide outlines.</li> <li>Experiment with writing utensils (jelly-grip pen).</li> </ul>
	MATH	Suggested Interventions
	Assets:  Able to memorize math facts accurately completes simple calculations  Able to remember formulas and use sequential processing	<ul> <li>Student is the class "facts expert".</li> <li>Student may have fewer problems in Algebra.</li> <li>Encourage student to math use rules efficiently.</li> <li>Allow student to demonstrate his/her strengths (i.e. remembering formulas) to peers.</li> </ul>
	Deficits:  ☐ Difficulty with complex computation and conceptualization ☐ May over generalize rules ☐ Unable to estimate and accurately monitor plausibility of answers ☐ May attempt problems that are much too difficult, take wild guesses	<ul> <li>Use Graduated Word Problem Sequence to teach about extraneous information. Refer to Strategy 1: Appendix B.</li> <li>Teach Verbal Word Problem Strategy. Refer to Strategy 2: Appendix B.</li> <li>Highlight operation signs in problems and key words in word problems.</li> <li>Teach memory strategies to help with student recall of computation sequences. Refer to Strategy 3: Appendix B.</li> <li>Teach estimation skills.</li> <li>Allow extra time on tests so student is not rushed.</li> <li>Use Math line: Concept-Building Tool www.howbrite.com</li> </ul>
	Poor visual-motor and visual- spatial skills	<ul> <li>Teach strategies to keep numbers lined up.</li> <li>Use large graph paper.</li> <li>Fold paper into columns.</li> <li>Draw vertical lines on paper.</li> <li>Turn lined paper sideways.</li> </ul>
(	Poor visual-motor and visual- spatial skills (continued)	<ul> <li>Simplify worksheets.</li> <li>Enlarge problems.</li> <li>Reduce number of problems on each page.</li> <li>Allow more space for writing.</li> <li>Assistive technology</li> <li>Calculator</li> <li>Math Pad. Refer to Appendix C.</li> <li>Access to Math. Refer to Appendix C.</li> </ul>
	"Showing work" on homework is difficult	> Allow student to "show work" on a larger piece of paper or not at all.

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# Independence/ Transition/ Work Experiences

# **Suggested Interventions**

#### Assets:

- Motivated to try work experiences
- Desire for more independence

➤ IEP team should develop a transition plan with as much student input as possible.

#### Deficits:

- May have very limited awareness of difficulties in a work setting
- Work experiences may be overwhelming
- ☐ Unable to engage in practical self-advocacy

- > Consider job exploration and sampling with adult assistance, such as a job coach.
- ➤ Refer to article; Nonverbal Learning Disabilities form 9 to 5, by Kelli Bond on www.nldline.com.
- > Encourage active involvement in support groups.
- ➤ Gradually promote independence by celebrating successes and providing appropriate challenges.
- > Assist in setting realistic goals and help student plan steps toward achieving those goals.
- ➤ Allow student to develop a strategy to explain his NLD to new teachers (i.e., one student developed a Power Point presentation that explained his assets/deficits)
- Assist student in identifying appropriate colleges and disability resources.
- Carefully consider job options that leverage strengths of NLD learner (verbal skills, good attendance, conscientiousness, honesty, attention to detail, high standards, loving/caring personality, passion for interests)
- Coordinating aspects of driving may be difficult
- Encourage learner with NLD to take driving classes.
- > Consider these tips from adult with NLD:
- Tum down the radio to remove distractions.
- If people are in the car when you are driving and it is especially stressful, let them know that it is not a good time for a conversation.
- · Practice parallel parking with a friend and straw bales.
- Get someone to show you the mechanics of parallel parking with model cars. If you can see from the outside how the wheels are moving, it will become more obvious.
- Get an old "pre-dinged" beater car so you don't have to worry about scratches and small dents.

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	<ul> <li>Mistakes can happen more easily when you are tired, rushed, or distracted; so be aware of your vulnerability.</li> <li>Make sure you get explicit directions based on things like landmarks, traffic signs and signs.</li> <li>A compass above the rear view mirror can help with directions.</li> <li>If you have a hard time with maps, pullover to look at it!</li> <li>Transcribe the map into written directions, "Turn right onto Route 31. Stay on 31 past Kind Road, past Black Hill Road. Turn left at the next road, should be Turk Hill Road etc."</li> </ul>

# APPENDIX A Social Strategies for the Learner with NLD

# Strategy 1: Teach nonverbal rules

#### ☐ Tone, volume, rate of voice

- Use a radio or TV; turn it up too loud or too soft. Have students comment on the effect on the listener. Compare to using a too loud or too soft voice in conversations.
- Make a "Volume Meter" that indicates too loud, too soft, just right. While a student talks, move the hand on the meter to indicate the level of volume and appropriateness.
- Watch videotapes of TV shows and match the feelings of the characters with the three parameters; volume, rate and tone. For example, when people are angry their voice is often loud, fast and irritable; when sad, their voices are soft, slow and flat.
- For speech rate, tape record student talking and together count the number of words in a certain number of seconds. Compare this rate to the student's peers and practice slowing down or speeding up, whichever is appropriate.

#### □ Facial expressions

- Collect magazine photos of people with different expressions. Discuss what emotion the facial expression seems to be showing.
- Use digital camera to take photos of students showing a range of emotions. Compare and contrast students' different "emotion faces".
- Play "Detective". Have one student (the "witness") describe a photo of a person, while the
  "Detective" draws the described person. The three zones of the face
  (forehead/eyebrows, nose/cheeks, mouth) need to be described.
- Using a mirror, have students:
  - Imitate a picture of a person's facial expression.
  - Write a script for a commercial and then act it out in front of the mirror.
  - Start with a "resting face" (no expression) and try to modify one part at a time.
- While group is talking or acting out a situation, use a "Magic Wand" to freeze a student at that moment. Talk about that student's facial expression.
- Discuss different eye movements and their meanings. Examples include; rolling, avoiding, open wide, looking sidewise, directly looking, half-shut, etc.
- Use videos from TV sitcoms or homemade videos of family or friend interactions. Turn off sound and try to determine from the facial expressions what the people are communicating. Turn sound back on to check for correctness.
- Practice shifts in facial expressions from happy to sad, angry to silly, frustrated to excited, etc. Discuss how your face feels different for each emotion.

## Body language including gestures, posture

Pick a phrase and make the appropriate gesture. Students in a group try to guess what
it means.

I'm cold. I'm tired. I don't know. Stop!

Come here. OK

Be quiet.
I'm waiting

Hurry up. I'm angry.

Whatever.

Get to work.

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- Teach students how to play Charades.
- Choose certain social situations (meeting someone, joining a game, waiting for someone, etc) and have students use the appropriate gesture/body posture.
- Practice walking/sitting with a book on head: stand up straight versus slouching.
- Use videotapes of animals and watch the body language. What does it communicate?
- Match gestures/body postures with facial expressions.

#### Physical boundaries, touch

- Talk about the "Space Bubble" we all live in. The generally accepted American boundaries are:
  - 0" to 18" = Intimate zone: We discuss private and/or delicate matters.
  - 18" to 4 feet = *Personal zone*: Our personal space and we feel uncomfortable when most people intrude into it (Think of an elevator!).
  - 4 feet to 12 feet = Social zone: Where we conduct our socialization comfortably.
  - 12 feet on =Public zone: Space commonly considered when giving speeches or talking to large groups.
- Use a tape measure to explicitly demonstrate the zones described above.
- Use hula hoops to show space boundaries. When hoops bump, you are too close.
- Teach student who gets too close to use an arm's length as a guideline. Practice in role
  plays and try to get students to visualize the arms' length rather than actually putting
  up their arm when approaching a peer.
- Practice invading each other's space and discuss how it feels. Have students practice at home with family members.
- Discuss how personal boundaries change depending on the social situation and the circumstances. Examples; a party with loud music, waiting in line, walking and talking on a narrow sidewalk, telling a secret, talking with a stranger, etc.
- Draw silhouettes on butcher paper and mark where it is okay to touch certain people (mom versus teacher, sibling versus playmate, etc.).
- Discuss difference between handshake and hug. Use these questions to determine appropriateness of each in different situations; WHO, WHERE, WHEN.

# Objectives (dress, jewelry, hairdo, hygiene)

- Talk about the meaning of the words; image, fashionable, unique, conformist, etc.
- Discuss thought-provoking questions:
  - Why do we get dressed-up?"
  - Why is it important to look nice for an interview?"
  - Why do people have stereotypes about certain types of dress, such as Goth, punk, conservative, preppy, etc?"
- Cut out pictures of outfits from catalogs, newspaper ads, and magazines. Have students match the appropriate outfit to certain social situations.
- Discuss the importance of good hygiene and the negative impact of poor hygiene.
- Write a personal hygiene goal that student will address daily. Incorporate an appropriate behavioral plan to address hygiene issues if necessary.
   (Adapted from: B. Evans, 2001, 5<sup>th</sup> Annual NLD Symposium)

# Additional Ideas on how to Teach Nonverbal Rules

#### Tone of Voice

- To regulate tone of voice, use music and rhythm to modulate. Practice beating out sounds on a drum. Practice saying one word loud and then soft. Vary the rate of speech.
- Use music to march out patterns and rhythm of different speech.
- Say phrases with different intonations. For example, using a tape recorder, the adult says
  a sentence in a normal tone of voice. Next, the adult models various ways to use
  intonation (i.e., fast, slow, irregular, etc.). Have the child imitate your intonation. This
  awareness of various intonations can assist the child with using appropriate prosody.
- When requesting items, have the student request in a variety of voices (high, low, angry, sad, etc.).
- Talk about what different tones mean. What does it sound like to have an angry voice?
   Happy voice? When would you use these?
- Have the adult tape record messages (as if leaving a message on an answering machine).
  Leave different types of messages such as urgent voice, don't worry about calling me
  back voice, etc. Have the child guess what type of message it is (i.e., Is it an urgent
  message? How the person is feeling? etc)
- Record voices of people the student's doesn't know (find friends, coworkers, etc). This will
  give the student practice hearing stranger's voices using different tones of voice for
  different types of messages and emotions.
- Play this game with a group of students. Make cards with happy, angry, and sad faces on them (these can be simple line drawings). Shuffle the cards and have one person pick a card without showing it to the other people. Have this person make a noise that reflects the emotion. The other person can guess what the emotion is. This can also be done by acting out a scene, but not using words — just body language.
- When the student is able to recognize various voices and emotions, talk about what would you say
  - o First step is simple. Example: "If someone is sad, what could you say?"
  - Second step is to act out various situations and emotions. Example: "You both want the same videogame. "What would you say?"
- Talk about tone of voice. Talk about what the tone sounds like for various emotions (angry, happy, sad, embarrassed, etc.). Make nonsense sounds imitating the tones of voice (the reason the sounds are nonsense is we don't want the child to pick up on the context just isolate the sound). When the child understands, reverse the activity and have him make nonsense sounds that imitate expressions (you might want to use visual aids such as pictures that mean various emotions or written words).

# Social Strategies (cont.)

#### **Facial Expressions**

- Play Guess What Face?
  - o Make a face (sad, mad, angry, happy, ecstatic, embarrassed, etc).

o Have the students guess what emotion your face depicted.

- Talk about what that face looks like (i.e., happy = smiling with lips up, eyes get small).
- Talk about why someone would feel this way, what could be the situation that that would cause him/her to have that face and emotion.
- Have the students make the faces.
- The websites listed below have some fun activities to practice the understanding of facial expressions:

#### www.do2learn.com

o This website has two games.

Facial Expressions: In this activity, you can adjust the parts of the face to obtain different facial expressions and matching emotions. It's very interesting to pay attention to how much the eyes, eyelids and brows are involved in the actual expression.

Feelings Game: This activity has pictures of real people. You must pick which facial expression matches the feeling (emotion) listed. It has four sections that increase in complexity and difficulty.

www.cite-sciences.fr/english/ala\_cite/expo/explora/image/mona.html#

 This website has a picture of Mona Lisa that the user can change into different emotions.

http://growe.homeip.net/BaronCohen/Faces/EvesTest.aspx

 This website contains some of Simon Baron-Cohen's research on the Essential Difference.

Mind in the Eyes Test: This test assesses the user's ability to make a judgment about a person's emotion based on what the eyes look like.

http://pbskids.org/arthur/games/aboutface/aboutface.html

This website has a very simple, fun game in which Arthur is teaching his dog Pal about faces. The user must help Pal choose a face that matches how the person feels in each sentence of the story.

http://www.dushkin.com/connectext/psy/ch I 0/facex. mhtml

o This website is very simple. It lets you select features of a facial expression that depicts a certain emotion.

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# Social Strategies (cont.)

#### **Posture**

- Make body postures/gestures expressing different emotions. Talk about what the posture means (i.e., shoulder shrug means = "I don't know"; tense shoulders = angry, etc.).
   When the child understands this, have the child act out the postures. Play a game where the adult calls out different postures and the child needs to make a posture with an emotion. Once the child masters this stage, cover your face to hide the facial expression and make various body postures. Child needs to figure out what the postures mean.
- Cut out pictures of people from magazines or take pictures of people in various body
  positions depicting a range of different emotions. Cut the heads from pictures so that
  the facial expressions are not shown. (With photos of people you could blank out their
  head and facial expressions with a small Post-It note if you don't; want to cut the
  picture.)
  - Talk about what the postures mean.
  - o Have students think of plausible reasons a person could be feeling that emotion.
  - o Talk about what another person might say.
  - For example, show a picture of anger. The person's body is tense and fists are clenched. What does this mean? What can you do/say? Is this the time you should approach another person?
  - Match heads with pictures/photos. Put heads on body postures that don't match the facial expression and talk about what looks "wrong" about it.

(Adapted from: Alex Michaels' Theory of Mind lecture from http://www.ddleadership.org/aspergers/

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# Strategy 2: Teach social rules explicitly and verbally.

- Explain unwritten social rules verbally using concrete terms. (Not, "Be good.')
- Explain rules positively, reasonably. ("Students walk in the halls because it is safer.')
- Explain why rules are important, student repeats the reason back verbally. ("We can't run in the halls because someone could fall and get hurt.")
- Expand student's knowledge of abstract social concepts by pairing a specific rule with a
  universal rule. ("We walk in the halls because someone could get hurt. When students
  follow school rules, our school will be a safer place.")
  (Adapted from: S. Thompson, 1997, The Sourcebook for Nonverbal Learning Disorders,)

### Strategy 3: Speaker/Listener Roles

Teach the differences between speaker and listener roles by explicitly talking about the similarities and differences between these roles.

Speaker
Speaks
Keeps body (arms/legs) still
Uses eye contact
Uses appropriate proximity,
facial expressions, body gestures
Lets listener ask questions
Acknowledges head nods
Waits for "uh, uh"
Pauses
Encourages listener to talk
Uses appropriate amount of verbiage

Listener
Listens
Keeps body (arms/legs) still
Uses eye contact
Uses appropriate proximity,
facial expressions, body gestures
Asks appropriate questions
Nods head
Says "uh, uh"
Waits for pause to change topic
Waits for pauses or encouragement
Responds to words by restating, agreeing, disagreeing
appropriately, etc.

# Strategy 4: "Talk-Aloud"

Use the "talk-aloud" strategy to model how student can learn to self-question and self-monitor his social behavior.

- Define the issue. ("We can't play our computer game now because it's PE time.').
- Discuss the options verbally. ("We could play during lunch. But I really need to talk to Mrs. Smith then. I already promised her. We could play after school, but then your Mom would have to pick you up which might be hard for her.')
- Determine best option. ("I think we should play tomorrow morning before school.")
- Take course of action. ("I'll call your Mom and ask her if she can bring you to school tomorrow 15 minutes early.")
- Review actions. ("I'm pretty sure that will work because I know we don't have a teacher meeting then. Your Mom told me she would bring you in early whenever she needed to.") (Adapted from: Thompson, S. 1997. The Sourcebook for Nonverbal Learning Disorders)

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### Strategy 5: Dealing with Teasing

Teach ways for students to deal effectively with teasing.

#### Technique A:

Steps that students can learn, role-play, practice:

- 1. Stop; take a deep breath, count to five.
- 2. Decide what the problem is and how you feel.
- 3. Think about your choices and their consequences.
  - Ignore the teasing.
  - Walk away.
  - Say something good about yourself or the other person.
  - Say how you feel in a friendly way.
- 4. Decide your best choice.
- 5. Do it.

(Adapted from: Sheridan, S. 1998. The Tough Kid-Social Skills Book)

#### **Technique B:**

Students can learn four rules to remember when they are teased. NLD students will need models and practice to be able to identify the differences between these different types of teasing. This instruction could be integrated with strategies to recognize nonverbal communication. Explicit scripts may need to be developed and role played in a variety of different situations.

Rule #1: If someone teases you in a *friendly way*, laugh along to show that you are able to laugh at yourself.

Rule #2: If someone teases you in a *friendly way*, you may tease the person back in a *friendly way*.

Rule #3: If someone teases you in a *mean way*, completely ignore and do not look like you are upset.

Rule #4: If someone teases you in a *mean way*, you may say, "You are putting me down. I don't like that."

(Adapted from: Gajewski, N., Mayo, P. 1989. Social Skills Strategies)

### **Technique C:**

Teach students to use self-talk to help them through the teasing. Self-talk can be a very empowering strategy if students are able to remember to use it and really believe it. Teach students to say the one or more of the following:

- Remember, "I'm not going to cry or get angry."
- Ask myself, 'What can I do or say?"
- Ask myself, 'Whose opinion is more important, the teaser's or mine?"
- Tell myself, "I have lot of things I'm really good at."
- Tell myself, "I can deal with this."

(Adapted from: Freedman, J. 2001, Easing the Teasing)

### Strategy 6: WHERE Strategy-An Approach to Explore Social Errors

The WHERE strategy can be used as a way to explore student's social errors at the time they occur. Teachers and parents can use this strategy to help students understand what went wrong and how the student can respond differently the next time a similar situation occurs. The steps are as follows:

- 1. Immediately after observing the student make a social error, pull him aside for a private discussion.
  - Make this discussion as confidential as possible.
  - Remember that the discussion should be constructive and supportive.
- 2. Actively involve the student in the discussion. Help the student to:
  - Understand what went wrong
  - Understand the consequences
  - Clarify feelings and emotions
  - Make better choices next time.
- 3. Steps in the WHERE strategy and questions for discussion:

What did you WANT?

What **HAPPENED?** 

What was your ERROR?

What were the **RESULTS?** 

What were your **EMOTIONS** (How did you feel?)

How will you do it differently next time?

- 4. Help the student to understand how he can try a different approach next time with success. Help him to remember to try the alternative by reminding him when needed.
- 5. The WHERE strategy can be paired with pictures to give the student a concrete visual to associate with the language he has used to describe the situation, his feelings and the alternative behavior(s). Either the adults or the students could draw appropriate pictures that correspond with each question in the WHERE strategy. The alternative behaviors might be called, "A Better Way".
- 6. The WHERE strategy can be modified to explore times that a social interaction has worked out well. Students can determine what they did correctly and respond that way again the next time a similar situation occurs. The steps are as follows:

What did you WANT?

What HAPPENED?

What did you do EFFECTIVELY?

What were the **RESULTS?** 

What were your **EMOTIONS?** (How did you feel?)

Next time, what will you do to assure another social success?

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# APPENDIX B Academic Strategies for the Learner with NLD

# READING

#### Strategy 1: Reading for the Main Idea

Teach student to read for main idea.

- After reading short selections, have student choose the best title from two choices.
- Student finds main ideas from paragraphs of expository text.
- Student writes headlines for selections, like a newspaper article.
- Request a one-sentence summary of a story event or of whole story.
- Discuss use of heading, subheadings, marginal notes, introductory statements and final summaries in books.

## Strategy 2: Part-to-Whole Teaching

Use part-to-whole teaching.

- Explain step-by-step verbally.
- Review old information and relate it to new information.
- · Discuss and explain cause and effect relationships.
- Start with concrete information and slowly move to abstract.

#### **Strategy 3: Teaching Inferencing**

Inferencing requires a range of complex knowledge. Plan reading activities based on integrating these skills.

- Background knowledge
- Knowledge of vocabulary used in the reading passage
- Knowledge of social interactions and motives behind human actions
- Knowledge of causal relationships (because-so)
- Knowledge of text structure

(For example, think of the knowledge needed to understand this statement, "The golfer kicked the ball.")

# **Strategy 4: Comprehension Strategies**

Teach self-monitoring comprehension strategies by modeling how student can approach different reading tasks. Teach student to:

- Set purposes for reading particular passage.
- Modify reading rate to match purpose (skim versus scan).
- Use background knowledge to relate to the content of the reading passage.
- Go back and reread something that wasn't clear the first time.

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#### **READING** (continued)

#### Strategy 5: RAP Strategy

Teach **RAP** strategy for comprehension:

**R**ead paragraph silently, think about what it means.

Ask yourself, 'What were the main ideas and important details?"

Put the main ideas and details in your own words, limit details to 3 or less

#### **Strategy 6: Pre-Reading Techniques**

Implement pre-reading techniques to "pre-set" student.

- Discuss difficult vocabulary.
- Highlight phrases, sentences that will help student understand the inferential meaning.
- Use K-W-L chart to activate background knowledge. (See Visual Organizer templates.)

#### Strategy 7: SNIPS

Teach use of **SNIPS** strategy to aid in the interpretation of visuals in textbooks, lessons, worksheets and assignments.

Start with questions & predictions.

Why are you analyzing the visual?

What is important to understand and remember about the visual?

Predict what you think the visual will be about.

Note what you can learn from hints.

Title says the visual is about...

Print says...

Lines are used to show...

Numbers are used to show...

Color is used as a decoration or to show...

Identify what is important.

Main idea to be remembered?

Important details/facts to be identified and remembered?

Plug it into the chapter/lesson.

What is the lesson/chapter about?

How does the visual relate to the chapter/lesson?

See if you can explain the visual to someone.

Explain visual to someone or to yourself if nobody is around.

Tell what you think the visual is about and how you think it relates to the chapter/lesson.

(From: Ellis, E. 1994, An instructional model for integrating content-area instruction with cognitive strategy instruction, *Reading and Writing Quarterly*)

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# **Social Stories**

Many persons with autism have deficits in social cognition, the ability to think in ways necessary for appropriate social interaction. For example, theory of mind describes the difficulty autistic individuals have in assuming the perspective of another person. This can be addressed by a technique which is used to help individuals with autism 'read' and understand social situations. This technique, called 'Social Stories,' presents appropriate social behaviors in the form of a story. It was developed by Carol Gray and seeks to include answers to questions that autistic persons may need to know to interact appropriately with others (for example, answers to who, what, when, where, and why in social situations).

There are four types of sentences used in social stories: descriptive, directive, perspective, and control. Descriptive sentences describe what people do in particular social situations. They are used to describe a social setting, step-by-step directions for completing an activity, etc. Directive sentences direct a person to an appropriate desired response. They state, in positive terms, what the desired behavior is. Given the nature of the directive sentence, care needs to be taken to use them correctly and not to limit the individual's choice. The greater the number of descriptive statements, the more opportunity for the individual to supply his/her own responses to the social situation. The greater the number of directive statements, the more specific the cues for how the individual should respond.

A third type of sentence used in social stories is the perspective sentence. This type of sentence presents others' reactions to a situation so that the individual can learn how others' perceive various events. The final type of sentence is the control sentence. This sentence identifies strategies the person can use to facilitate memory and comprehension of the social story. Thus, these sentences are added by the individual after reviewing the social story.

Carol Gray developed the social story ratio which defines the proportion of directive or control sentences to descriptive and/or perspective sentences. She suggests that for every one directive or control sentence, there should be two to five descriptive and/or perspective sentences. Directive or control sentences may be omitted entirely depending on the person and his/her needs.

Examples of each type of sentence are presented below.

#### **Descriptive Sentence**

The bell rings for the children to come in from recess. The children go to their classroom where the teacher reads a story.

#### **Directive Sentence**

I am playing during recess. The bell rings for me to come in. I stop playing and line up to come in. I follow the other children and quietly go to the classroom. When we get to the classroom, I go to my desk and sit down. I listen as my teacher reads a story.

#### Perspective Sentence

When the bell rings for recess to end, the teacher is happy to see all the children line up quietly and walk to their classroom. Many children are excited that they get to hear a story. The teacher likes to see the children listen. The teacher likes it when children are quiet during the story.

# **Goal: How to show interest in others**

Developed by Lynne Castellucci 2002

General	Specific
1. Be physically near.	In class or work in a social situation, be in the other's line of vision with your shoulders facing the other person or persons.
2. Eye contact.	<ul> <li>2. In class or the workplace, periodically make eye contact.</li> <li>When the teacher or co-worker is lecturing/speaking.</li> <li>When you are being or you are asking a question.</li> <li>When you are being spoken to or you you are speaking to someone.</li> <li>* It is important to know if direct eye contact is difficult for you, you can look at the middle of someone's forehead—that way they will feel that you are giving eye contact.</li> </ul>
3. Use body language.	3. Lean forward or nod your head, it shows you are interested in what the speaker is saying.  Use facial expressions (smile, frown, etc.) again this shows the speaker you are interested in what they are saying.

# Goal: How to start, maintain, and end conversations Developed by Lynne Castellucci 2002

General		Specific			
1.	Begin with a greeting and a name. (when using the phone, introduce yourself)	1. "Hello" "Hi" "Hey" (Hi, this is Ryan)			
2.	Use small talk. (use a minimum of the 3 sentence exchange system you speak, by opening with a greeting, let the partner respond, you use small talk sentence or ask a question sentence, let your partner respond, and then can close the conversation).	2. What's new? What are your plans for today?			
3	Ask questions.	3. AboutFamily, Weekend, School, Work, Person's interests (e.g. "What did you do this weekend?" or "You still playing video games?")			
4.	Get to the point (if needed).	4. "I need to know if I can borrow your headset tonight."			
5.	Close conversation.	5. "So long" "See you later" "I have to go."			

# Goal: How to solve a problem Developed by Lynne Castellucci

G	eneral	Specific	
1.	What skill do I need to help solve this problem?	Define the problem.	
2.	What are possible solutions and evaluate the solution.	<ul> <li>2. Brainstorm, for example: What is one solution? What will happen?</li> <li>What is another solution? What will happen?</li> <li>What is a third solution? What will happen?</li> </ul>	
3.	Choose one solution.	3. Look at the list, choose what you will do	).
4.	Implement one of the solutions.	4. Make an action plan.	
5.	Evaluate it's effectiveness.	5. Did it work?	

# Goal: How to ask for help appropriately Developed by Lynne Castellucci 2002

General	Specific
1. When do I ask for help?	1. When I'm not getting what I want.  -or-  When I'm not meeting other's expectations.
2. What is my specific problem?	2. I can't get the work done or on "time."  -or- I don't understand the directions.
3. Politely initiate.	3. Is this an appropriate time to interrupt?
4. State the problem you need help with.	4. I can't understand the directions.
5. State your need.	5. I need the instructions to be shorter—outlined in writing, concrete, more specific, etc.
6. Close conversation.	6. Thank you for your time and help.

# **Goal: How to Interrupt**

Developed by	zίs	nne	Castellucci	2002
Developed b	Y L.)	711110	Castonador	~ O O C

General	Specific
Is this a good time to interrupt? Assess what the person is doing. Are they having a conversation? Teaching a class?	Do my wants or needs require immediate attention,
2. Get the person's attention.	2. Knock on the door, -or- Raise your hand, -or- Ask "Mr. Smith, I apologize, may I interrupt you?" "Excuse me Mr. Smith, may I interrupt you?" -or- Stand next to the person you want to speak with so they notice you, give eye contact to let the person know you want their attention.
3. Give the reason for the interruption.	<ol> <li>"I would have waited to speak with you but I would like immediate attention because (name the reason)."</li> <li>If the person says to you that they can not help you immediately, you can say, "I understand, when can we speak"</li> </ol>

#### What Parents Should Know About Placement In LEAST RESTRICTIVE ENVIRONMENT

Since its inception in 1975, the Individuals with Disabilities Act (IDEA) has required that schools provide a free and appropriate education in the least restrictive environment to students with disabilities. The requirement of least restrictive environment (LRE) has been reinforced by the recent amendments to the IDEA. It is important that parents of children with disabilities become familiar with the definition and features of LRE because it represents a portion of the bedrock on which our children's rights are founded.

LRE is a term used when discussing placement. IDEA defines least restrictive environment as education provided to children to the greatest extent appropriate, with their non-disabled peers. The revised rules about placement further encourage that students be placed in their neighborhood schools in the general program unless that would not be appropriate for meeting their individual needs. IDEA '97 emphasizes student involvement in the general curriculum. The IEP of each student must now contain "An explanation of the extent, if any, to which the child will participate with non-disabled children in regular class."

In determining a child's placement in the LRE, the IEP team should first consider placement in the general education classroom, and determine if this would be appropriate with the provision of supplementary aids rid services. Supplementary aids and services are defined as "Aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities be educated with non-disabled children to the maximum extent appropriate..."

Placement needn't be an all-or-nothing matter. Many students will spend portions of the school day in different settings. School must provide a continuum of services, meaning an array of possibilities. Here are some examples of different placements on a continuum, from least to most restrictive.

Placement in the general classroom in the neighborhood school

Placement in the general education classroom with related services provided in the classroom

Placement in the general education classroom with related services provided elsewhere (pull out), in various proportions

Placement in a special education classroom in the neighborhood school

Placement in a school that serves only students with disabilities

Placement in a 24-hour treatment facility

The most important things to remember about placement are 1) the law favors the least restrictive placement, and 2) placement decisions should be made on the basis of the student's assessment and goals and objectives.

# LEAST RESTRICTIVE ENVIRONMENT REVIEW

Short Name			5	wce:	и мо	-
Prior to IEP review and recommendation	for placement, the following steps h	ave been im	pleme	nted	:	
Program Specialist reviews stude Other piacements have been exp	ludes information relevant to referral		dilicati	ions	or re	?Sources.
During the IEP meeting, the following ste	ps have been implemented:					
☐ IEP goals are current and include ☐ Integration agreements/plans made				٠		
L INTERVENTIONS		<del>- 1</del>	···			
Check the items which describe interve Y=Yes N=No NA=Not Appropris	entions tried in current placement to	ensure succ	ess in	the	Lea	st Restrictive Environment
Y N NA	Y N NA		Y	N	NA	
O O adapted cumculum     O O adapted materials	O O O physical accommo		0	ם	0	strategies for promoting peer support
O O alternative coniculum	O O D team teaching		0	0	0	modification to behavior management techniques
D	U U U inservice training		0	0	O	additional assessment
strategies	O O O specialized service incidence disabiliti		0	0	0	recreational activities
O extracurricular activities	O O reader assistance		0	0	0	vocational activities
O O DIS services	O O notetaking assistar	же	0	0	0	transition activities
C Classroom grouping	O O counseling		D	D	D	other (specify)
O O ciassroom assistant	O O modification to edu					
special education consultation	schedule, testing, a grading procedures					
IL PLACEMENT OPTIONS				******		
On the basis of findings from section I ar	nd a review of the student's needs, t	he following	place	men	t ha	s been recommended:
general education class with suppler		□ spesi				
general education class with resource	,	_ `		٠.		instruction
Special class at school of residence			die s	•		
special class within district but not re	gularly assigned school					idential setting
Special class at center		•				<del>-</del> ,

# Required Continuum of Placement, Program and Service Options California Laws and Regulations

# 1) Regular class placement consistent with federal law (i.e., with supplementary aids and services) (EC 56361(a))

Children with disabilities, to the maximum extent appropriate, including children in public or private institutions or other care facilities, are educated with children who are not disabled. Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR 300.550). Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if not disabled. In selecting the least restrictive environment (LRE), consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs (34 CFR 300.552). Supplementary services are listed in federal laws as.... resource room or itinerant instruction to be provided in conjunction with regular class placement (34 CFR 300.551(b)(2)).

Question: If modifications are necessary for a child with a disability to participate in a regular education program, must they be included on the IEP?

Answer: Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g. for a child with a hearing impairment, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education (34 CFR Part 300, Appendix C). These modifications are also required for eligible students with disabilities under the Rehabilitation Act of 1973, Section 504.

## 2) Resource specialist program (RSP) (EC 56361(b))

Students may receive instruction and services from the resource specialist program if their individual instructional needs for special education and related services are less than 50% of the instructional school day. A resource specialist program shall provide, but not be limited to, providing instruction and services for those pupils whose needs have been identified in an IEP developed by the MEP team and who are assigned to the regular classroom for the majority of the school day. Resource specialist programs may provide information and assistance to individuals with exceptional needs and their parents; provide consultation, resource information, and material regarding individuals with exceptional needs to their parents and to regular staff members; coordinate special education programs for each individual with exceptional needs enrolled in the resource specialist program; monitor pupil progress on a regular basis, participate in the review and revision of the IEP, as appropriate, and refer pupils who do not demonstrate appropriate progress to the IEP team. At the secondary level, resource specialists provide emphasis on academic achievement, career and vocational development, and preparation for adult life.

## 3) Designated instruction and services (DIS) (EC 56361(c))

Designated instruction and services (similar to related services in federal law and regulations) are to be provided to students with disabilities as determined by the IEP team to assist the student in benefiting from their special education program. Speech and language programs and services in California can be both a special education program option for an identified student such as a specific class or a related service to assist the student in another - program option.

Designated instruction and services may be provided to individuals or in small groups in a specialized area of educational need, and throughout the full continuum of educational settings. DIS, when needed as determined by the IEP team, shall be specified in the IEP, including frequency and duration of services.

All entities and individuals providing DIS shall be qualified. All entities and individuals providing instruction and services shall be: employees of the school district or county office or employed under contract according to procedures required under EC 56365 (nonpublic, nonsectarian schools/agencies); or employees, vendors or contractors of the State Departments of Health Services or Mental Health, or any other designated local public health or mental health agency. (CCR, Title 5, Section 3051)(34 CFR 300.11)

Designated instruction and services include, but are not limited to, the following:

- language and speech development and remediation
- audiological services
- orientation and mobility instruction
- instruction in the home or hospital
- adapted physical education
- physical and occupational therapy
- vision services
- vision therapy
- specialized driver training instruction
- counseling and guidance
- psychological services, other than assessment and development of the IEP
- parent counseling and training
- health and nursing services
- social worker services
- specially designed vocational education and career development
- recreation services
- specialized services for students with low incidence disabilities, such as readers, transcribers, sign language interpreters, and vision and hearing services
- services for students with chronic illnesses and/or acute health problems (as specified in state regulations CCR 3051.17) including consultation; home and/or hospital instruction; and other instructional methods using advanced communication technology
- designated instruction and services for the deaf and hard of hearing

#### 4) Special Classes and Centers (EC 56361(d))

Special classes and centers that enroll pupils with exceptional needs with similar and more intensive education needs shall be available. The classes and centers shall enroll the pupils when the nature or severity of the disability precludes their participation in the regular school program for a majority of the school day. Special classes and centers and other removal of individuals with exceptional needs from the regular education environment shall occur only when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily due to the nature or severity of the exceptional need.

#### 5) Nonpublic nonsectarian school services (EC 56361(f))

Nonpublic, nonsectarian school services, including services by nonpublic, nonsectarian agencies shall be available. These services shall be provided (pursuant to EC Section 56366) under contract with the district, special education local plan area, or county office to provide the appropriate special education facilities, special education, or designated instruction and services required by the individual with exceptional needs when no appropriate public education program is available. Nonpublic, nonsectarian schools and agencies must meet state certification standards. Local school districts must monitor the progress of their students enrolled in nonpublic schools.

# 6) Instruction in settings other than classrooms where specially designed instruction may occur (EC 56361(g))

The IEP team will need to determine where specially designed instruction may occur and in what setting(s). It is not uncommon for some students to receive instruction in various settings and locations to meet their individual needs (community settings, work settings, community colleges, etc.) as stated on the IEP.

# 7) Designated instruction and services in a hospital when no appropriate public education is available (EC 56361.5(a))

A school district, special education local plan area, or county office of education may not contract with a sectarian hospital for instructional services. They shall contract with a hospital for designated instruction and services required by a student with a disability only when no appropriate public education is available. "Hospital" means a health care facility licensed by the California department of Health Services. (Also see instruction in the home, #9, below).

#### 8) State special schools (EC 56361(f))

Placements in state special schools (pursuant to EC 59020, 59120, and 59220) shall be made only as a result of recommendations of the IEP team, upon a finding that no appropriate placement is available in the local plan area. Referrals for further assessment and recommendations to the California Schools for the Deaf and Blind or the Diagnostic Centers (following EC 56326) shall not constitute placements in state special schools.

Eligibility and priority for admission for the California School for the Deaf includes the following: every deaf person between the ages of three and 21 years, who is a resident of the state and who meets the criteria set forth in this section (59020), is entitled to an education in the California School for the Deaf free of charge. Priority in admission shall be given to elementary age deaf minors residing in sparsely populated regions and to secondary age deaf minors in need of a high school program, for who appropriate comprehensive educational facilities and services are not available or cannot be reasonably provided by their local school districts or county educational services.

The California School for the Blind is a part of the public school system for the state, as is the California School for the Deaf, except that it derives no revenue from the State School Fund, and has for its object the education of visually impaired, blind, and deaf-blind pupils who, because of their severe sensory loss and educational needs, cannot be provided an appropriate educational program and related services in the regular public schools.

#### 9) Instruction and services in the home (CCR 3051.4)

Placement and services to be provided in the home are an IEP team decision based on the individual needs of the student. Special education and related services provided in the home or hospital for school age pupils are limited to those pupils who have been identified as an individual with a disability according to federal (IDEA) and state laws and regulations (CCR 3030). The IEP team recommends such instruction or services. Instruction may be delivered individually, in small groups or by tele-class. For those individuals with exceptional needs with a medical condition such as those related to surgery, accidents, short-term illness or medical treatment for a chronic illness, the IEP team shall review, and revise, if appropriate, the IEP whenever there is a significant change in the pupil's current medical condition.

When recommending placement for home instruction, the IEP team shall have in the assessment information a medical report from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the pupil from attending a less restrictive placement. The report shall include a projected calendar date for the pupil's return to school. The IEP team shall meet to reconsider the IEP prior to the projected calendar date for the pupil's return to school.

Instruction in the home or hospital shall be provided by a regular class teacher, the special class teacher or the resource specialist teacher, if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialists shall provide such instruction. The teacher providing the home instruction shall contact-the pupil's previous school and teacher to determine: the course work to be covered; the books and materials to be used; for pupils in grades 7-12, the teacher shall confer with the school guidance counselor to determine the hours the pupil has earned toward semester course credit in each subject included in the .IEP and the grade as of the last day of attendance; who is responsible for issuing credits when the course work is complete; and, who will issue the diploma if the pupil is to graduate.

#### Kathy Chisholm, Special Education Resource Teacher, Davis County School District , February 1999

From the beginnings of my special education training, least restrictive environment (LRE) always seemed to have a negative connotation. However, the reasoning behind it is a positive drive in educational placements for students. We, as special educators, are trying to provide students the chance to "open" or "unlock" opportunities available to them to experience growth in levels of independence, academic skills, social networks, and behavior. Across the country some have taken up the banner of "inclusion" to mean that all students should be educated wholly in the mainstream environment or a "one size fits all" prescription. The reality is all students are different, and one size does not fit all.

According to the National Information Center for Children and Youth with Disabilities, (NICHCY) "IDEA '97 does not use the term 'inclusion.' However, IDEA does require school districts to place students in the LRE." In other words, "to the maximum extent appropriate, school districts must educate students with disabilities in the regular classroom with appropriate aids and supports, referred to as 'supplementary aids and services,' along with their non-disabled peers—unless the student's IEP requires some other arrangements." In addition, the U.S. Department of Education draft regulations of October 22, 1997 for IDEA 97 states that, "a student be involved and progress in the regular curriculum" and "be educated and participate with other children with disabilities and non-disabled children."

For successful inclusion in the least restrictive environment "three factors must be considered: (1) the educational benefit to the student from regular education in comparison to the benefits of special education; (2) the benefit to the disabled student from interacting with non-disabled students; and (3) the degree of disruption of the education of other students resulting in the inability to meet the unique needs of the student with a disability" (NICHCY web site). In the end, the responsibility is ours to consider these points based on what each individual student requires to help him/her progress within the general curriculum based on specific needs and what constitutes "reasonable supplementary aids and services."

At North Layton Junior High School, several approaches are in place that enables us to attend to the individual needs of students and also include them when possible in the general education environment. In addition to a full resource program, we have two self-contained learning centers with a total of six teachers and three paraprofessionals. This gives us the opportunity to render a near complete continuum of services. Together we work to structure environments that allow students who demonstrate the necessary abilities to be educated more often with non-disabled peers. Also students may be educated separately within resource or self-contained or shared for a period or two as we try to find a placement where they can be successful.

A recent approach we have been using to benefit students is a level system within the resource program that enables us to hold students accountable for their grades and behaviors as they participate in the special education and general education environments. A "credit card" is carried by the student to every period of the day where teachers mark "yes" or "no" to five different target behaviors and give an indication of the students academic standing in the class. The information is tracked and students move up or down, gaining or losing privileges, based on a clearly defined set of criteria. This has been particularly successful in helping students to self-monitor throughout the day.

We also have a "school within a school" based on the middle school concept. This helps provide the needed supports to transition seventh grade students into the secondary structure. A special educator is assigned to each of four teams to work with regular educators and students based on need. This

may include services from coordinating and/or teaching pullout and team classes to strictly consultation for some students. It also allows the team of teachers to maintain a proactive approach by communicating about all students on a regular basis, benefiting the entire team.

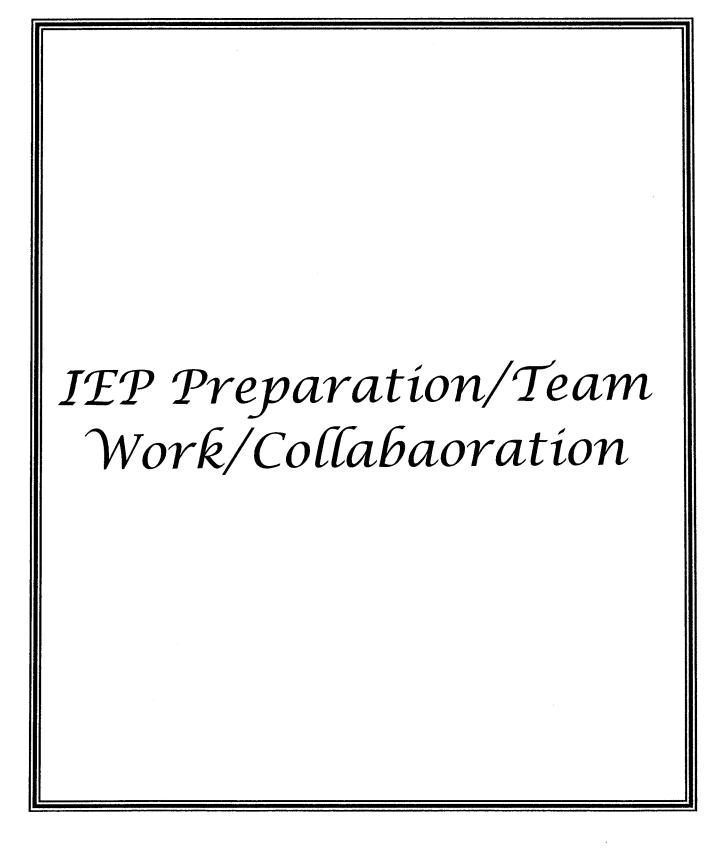
An extension of this approach is our team teaching in the eighth and ninth grade math and English classes. This methodology allows a large population of special education students to participate with their non-disabled peers. Here both regular and special educators work together on a daily basis to provide the appropriate services within the confines of a regular education classroom. We have found that the majority of students in this placement often begin to model appropriate classroom behaviors demonstrated by their non-disabled peers as well as achieve academically. For those who need small group instruction, we provide the regular education curriculum with adaptations within a pullout model. With a full continuum of classes in both environments, students are able to move within the system based on their success or failure in meeting individual education goals.

As we attempt to meet students' individual needs and provide a variety of "supplementary aids and services" the challenge remains ours to give students the opportunity to be successful in the least restrictive environment. LRE and the intent set forth in IDEA 97 may be open for some interpretation at this point. One thing we do know as we attempt to implement that vision at the local level is that we do not have all the answers. By sharing information and communicating with other teachers, parents, and students, we will all come closer to attaining the vision of IDEA 97. Reference available upon request from the ULRC.

Scientifically-Based Interventions and Instruction v. Accommodations v. Modifications

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	Deliminon	Examples
	An intervention is a specific skill-building	Reading:
	strategy implemented and monitored to	Wilson Reading System & Fundamentals
	improve a targeted skill (i.e. what is actually	Peer Assisted Learning Strategies (PALS)
	known) and achieve adequate progress in a	Paths to Achieving Literacy Success (PALS)
	specific area (academic or behavioral). This	Michael Heggerty Phonemic Awareness
Scientifically-Based Interventions	often involves a changing instruction or	6 Minute Solution
and Instruction	providing additional instruction to a student in	Reading Mastery
	the area of learning or behavior difficulty.	SRA/Corrective Reading
		Reading A-Z
	A scientifically-based intervention refers to	Jolly Phonics
	specific curriculum and educational	Read Naturally
	interventions that have been proven to be	Road to the Code
	effective for most students and the research has	Earobics
	been reported in scientific, peer-reviewed	Lexia Software
	journals.	Solioquy Software
		Great Leaps
		Bringing Words to Life
		Adding addition time of effective instruction
		Math:
		Touch Math
		Great Leaps Math
		Corrective Math
		PALS Math
		McGraw-Hill Number Worlds
		Social-Emotional:
		Second Step
		Skillstreaming
		Aggression Replacement Training
		Strong Kids/Strong Teens
		I Can Problem Solve

Accommodation eliminates obstacles that would interfere with a student's ability to perform or produce at the same standard of performance expected of general education students students  Accommodations performance expected of general education students  Accommodations students  Accommodations performance expected of general education signing an assignm breaking down wo expecting all segme Staying after school Preferential scating Providing an extra Home-School Com Books on tape  A modification is a change that actually lowers Reading test and retrestible standards of performance (i.e. what is changing multiple-options Shortening the spell Using a different grand preded to be compaled.			
perform or produce at the same standard of performance expected of general education students  A modification is a change that actually lowers the standards of performance (i.e. what is expected to be known)		An accommodation eliminates obstacles that would interfere with a student's ability to	Reading a test to the student (w/ no additional help)
performance expected of general education students  A modification is a change that actually lowers the standards of performance (i.e. what is expected to be known)		perform or produce at the same standard of	Allowing extra time to take the same test or
A modification is a change that actually lowers the standards of performance (i.e. what is expected to be known)	Accommodations	performance expected of general education	complete the same assignments
A modification is a change that actually lowers the standards of performance (i.e. what is expected to be known)		students	Signing an assignment notebook
A modification is a change that actually <u>lowers</u> the standards of performance (i.e. what is expected to be known)			Breaking down work into small segments but still
A modification is a change that actually <u>lowers</u> the standards of performance (i.e. what is expected to be known)			expecting all segments to be completed
A modification is a change that actually <u>lowers</u> the standards of performance (i.e. what is expected to be known)			Staying after school for homework help
A modification is a change that actually <u>lowers</u> the standards of performance (i.e. what is expected to be known)			Preferential seating
A modification is a change that actually <u>lowers</u> the standards of performance (i.e. what is expected to be known)			Providing an extra set of books at home
A modification is a change that actually <u>lowers</u> the standards of performance (i.e. what is expected to be known)			Home-School Communication Journal
A modification is a change that actually <u>lowers</u> <u>the standards</u> of performance (i.e. what is expected to be known)			Books on tape
the standards of performance (i.e. what is expected to be known)		A modification is a change that actually lowers	Reading test and rewording/re-explaining
expected to be known)	1 1	the standards of performance (i.e. what is	questions on the test
options Shortening the spel Using a different gr Reducing homewon	Modifications	expected to be known)	Changing multiple-choice answers from 4 to 3
Shortening the spel Using a different gr Reducing homewor			options
Using a different gr Reducing homewor			Shortening the spelling list
Reducing homewor			Using a different grading scale for a student
needed to be compl			Reducing homework/number of assignments
			needed to be completed



### Classroom Observation Checklist

Listed below are some suggested questions you may wish to ask or take note of when visiting a potential classroom for your son or daughter. You may wish to visit more than one preschool setting. Many of these questions may not apply to your situation; others not listed here may be important to you. This listing is offered simply as a guideline to assist you, so that you will feel comfortable about the new classroom your child may be entering.

School	Date	
Teacher		
Program Details:		

- 1. Is this school's location near my home?
- 2. What are the hours of the program?
- 3. Does my child attend everyday?
- 4. What does the weekly schedule look like?
- 5. Does the program extend over the summer?
- 6. How many years might my child be in this program?

### Classroom Environment:

- 1. Does the classroom appear clean and safe for my child?
- 2. Is it decorated in a fun and appealing manner?
- 3. Is there a variety of toys and materials displayed that are appropriate for my child?
- 4. Is there adequate space for the children to move freely in the classroom?
- 5. Would most of my child's activities be with the entire class? A small group? Individual?
- 6. Are there opportunities for activities on computers?

### Classmates:

- 1. How many children are there in the class?
- 2. What is the age range of the class?
- 3. Are there any behaviors exhibited that might endanger my child?
- 4. Will the other children's skill levels be challenging for my child? Too frustrating for my child? Boring to my child?
- 5. Is there an opportunity to play with other preschoolers who do not have disabilities?

### School and Classroom Staff:

- 1. Who is the administrator in charge of the program?
- 2. What area of special education (communicatively, orthopedically, severely handicapped) is the teacher credentialed in?
- 3. Is there a warm and caring atmosphere in the classroom?
- 4. How many aides are in the classroom?
- 5. Is there a nurse on-site? How many days of the week?
- 6. Who on staff speaks my language?

### Related Services:

- 1. How would speech therapy, physical therapy, adaptive physical education, etc. be offered to my child?
- 2. Are the specialists here on campus?
- 3. Would it be a group activity with the entire class, or would my child be pulled-out from his classroom?
- 4. How soon will these related services begin?

### Playground:

- 1. Is the outside play area large and well equipped?
- 2. Does the equipment appear safe for my child?
- 3. How many children are on the playground at one time?
- 4. Who supervises outside play activities?

### Toileting:

- 1. Are the bathrooms close to the classroom?
- 2. Are the bathroom fixtures an appropriate size for small children?
- 3. Who would be taking care of my child's toileting needs?
- 4. Can the classroom keep a supply of my child's extra clothes, diapers, wipes, etc.?

### Food:

- 1. Are any meals provided during the day?
- 2. Is there a snack?
- 3. Who is to provide the food?
- 4. Are there any fees for meals/snacks?
- 5. Is there a kitchen or a microwave available to warm-up food?
- 6. Who will help feed my child?

### Medication:

- 1. Who will be responsible for giving my child his/her medication?
- 2. How much of a supply will the school keep on hand?
- 3. In case of a prolonged stay at school because of earthquake or other disaster, who would take care of my child's medication requirements?

### Transportation:

- 1. Can my child ride the bus to school?
- 2. Can he/she ride in his own car seat on the bus?
- 3. Who will help my child off the bus?
- 4. Will my child go directly to the classroom in the morning, or will he/she be playing outside for a while?
- 5. Will special equipment for my child go back and forth each day on the bus?
- 6. If I drive my child to school, what time should I arrive and pick him/her up?

### Child Care:

1. Are there any child care opportunities provided before or after school hours for my child? At this school? Anywhere else in the district?

### Family Involvement:

- 1. Would I be able to volunteer in the classroom?
- 2. What are the procedures for parental visits?
- 3. Are there restrictions as to how often and how long I could observe the classroom?
- 4. How does the teacher keep in touch with the parents phone calls, notebooks, meetings, home visits?

### Suggestions for Successful IEP Meetings

	Take time to call new or concerned parents before the IEP to reassure them about the process and answer any questions they may have.	
0	Give parents copies of all assessments prior to the IEP meeting and explain the results.	
0	Help parents feel they are partners in the education of their child and that their voice counts.	
	Seat parents so that they will feel empowered in the IEP meeting and can see all participants and the board, if one is used. It helps to have someone the parent knows sitting beside them, not parents on one side of the table and district on the other.	
	Encourage parents to express their needs and concerns. Encourage parents to prepare and bring an agenda with them, so they don't forget their issues. Many times it can be more productive for the team to allow the parents to present first.	
	Take parent concerns constructively, not personally.	
	Notify parents prior to the meeting if a member of the IEP team cannot stay for the entire meeting and make sure the parent has time to ask questions.	
	Allow parents and or staff to take a short break if issues become heated. Stop and reschedule the meeting if <u>any</u> member of the team feel uncomfortable or attacked.	
	Involve parents in creative problem solving and give honest feedback.	
	Give parents time to process information which they may be hearing for the first time. (We often advise parents not to sign the IEP document until they have time to go over it and discuss it privately. It's not an issue of trust, but one of having the parents feel comfortable with what they are agreeing to. We believe that parents are more satisfied in the long run and don't need to call additional meetings to clarify issues).	

Rosenberg edited from 1996/2003

### Be Prepared for Your Meetings

O	5 Days prior to your IEP/IPP/or other meeting, make sure you have received any reports, send copies of your reports to the staff, and include a copy of your agenda.
O	If you have questions regarding reports call and or develop your question list prior to your meeting.
0	Make sure you have a specific plan about where you want you meeting to end. Know what supports, services, and placement you want.
0	Bring your child's records.
0	Bring a composite of Special Education Laws, the Lanterman Act
O	Make sure to visit potential programs prior to your meeting.
0	Bring a support person to take notes, and support you. However, your support should NOT share their experiences; this is your child's meeting.
0	Dress `The Part' after all you are a professional parent.

### Learning Disabilities Association of America

### **FACT SHEET**

### PREPARING FOR A SUCCESSFUL IEP MEETING

Please retain this information for continual use.

Your child has been in special education and you are preparing for an IEP meeting or this is the first time you will be part of the IEP team. Here are some suggestions for a successful meeting. Under (IDEA) Individuals with Disabilities Education Act and the Amendments of 1997, parents are designated as important IEP team members. There is 'homework- you should prepare on your child's behalf. It may not be possible to do all the suggestions listed but attempt as many as you can so you can be a knowledgeable member of the IEP team.

### 1. TALK TO YOUR CHILD.

Know what is working for him/her in school. Ask if there is something he/she would like to be able to do better.

### 2. VISIT YOUR CHILD'S CLASSROOM.

Make an appointment to visit your child in school. Try to observe more than one subject area.

### 3. REVIEW YOUR CHILD'S RECORDS.

At your child's first IEP meeting, the records that are available for review may be limited to report cards, teacher notes and standardized tests. For "veterans", review the confidential (special education) file and cumulative (general information) file kept for all students.

### 4. PREPARE A LIST OF YOUR CHILD'S STRENGTHS AND WEAKNESSES.

Include such items as the following: hobbies, behavior at home, relationship with family and friends, and difficulties you may have noticed.

### 5. WRITE DOWN SOME GOALS YOU WOULD LIKE TO SEE YOUR CHILD ACHIEVE IN THE COMING YEAR.

Consider what has been successful the previous year. Remember goals for self-help, social and emotional areas as well as academics. For students entering high school consider the vocational/career goals for transition.

- what skills would you like your child to learn?
- what behaviors would you like to see improved?
- what are your main concerns for your child right now?

### 6. REVIEW YOUR GOALS WITH THOSE ON YOUR PREVIOUS IEP.

Be sure all goals are necessary for an "appropriate" education as required by law. Put the goals into priority order. Prepare your questions to raise at the IEP discussion.

DECIDE HOW OFTEN YOU NEED PROGRESS REVIEWS.

Under the IDEA Amendments, this will be required each time a regular report card is issued. If you need bi-monthly feedback, state that request.

BE PREPARED TO SUPPORT YOUR IDEAS AND REQUEST.

Bring any recent evaluations or medical information with you. Bring samples of the work your child has done. Be prepared to negotiate as the team develops the IEP.

9. DISCUSS THE GOALS WITH YOUR CHILD AND ASK IF HE/SHE WOULD LIKE TO ATTEND THE IEP MEETING.

Prepare the groundwork for your child's participation during the middle school years. You are helping your child to learn how to self-advocate.

10. ASK WHO WILL BE ATTENDING YOUR CHILD'S IEP MEETING.

Your notice of the meeting should include a list of people and their titles. It is helpful for parents to bring "another pair of ears" to help you listen at the meeting. If you do plan to bring someone with you, let the school know ahead of time.

11. FIND OUT HOW MUCH TIME HAS BEEN SCHEDULED FOR YOUR MEETING.

If you think you will be rushed, request additional time or ask that the IEP meeting be reconvened to complete the discussion and plans.

12. FOR A FIRST TIME IEP MEETING, TALK TO OTHER PARENTS.

The Learning Disabilities Association local parent support groups and state Parent Information/Training Centers will provide that resource.

13. SUGGESTIONS FOR AN EFFECTIVE MEETING.

Organize your materials

Write down your questions and suggestions

Request introductions at the beginning of the meeting if they are not done

Know what you want to say; practice saying it

Be positive and assertive but not antagonistic

Thank the participants

14. MAINTAIN AN ONGOING FILE OF YOUR CHILD'S RECORDS AND YOUR COMMUNICATION WITH THE SCHOOL.

### COLLABORATIVE NEGOTIATION SKILLS FOR THE EDUCATIONAL PLANNING TEAM

### TIPS, TOOLS & TRAPS

### **COMMUNICATION PROCESS:**

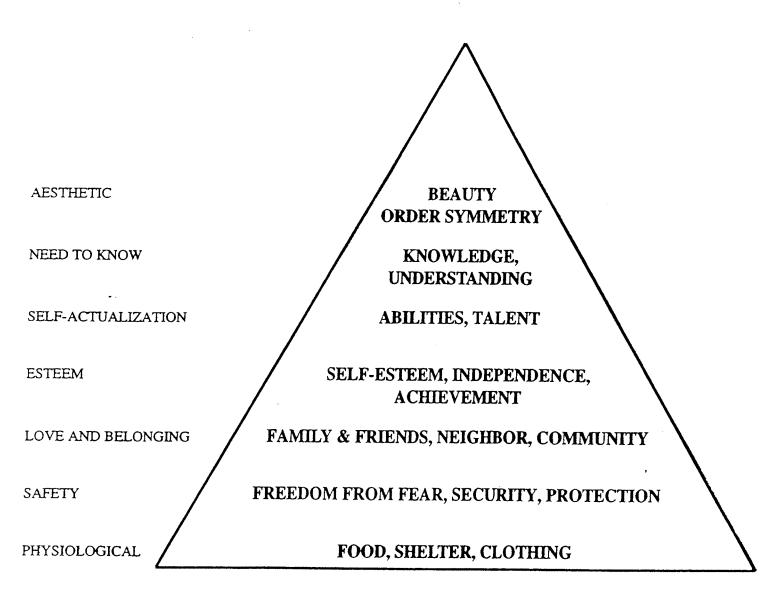
- Nature gave you 2 ears & 1 mouth. Use them in direct proportion.
- Ask questions lots of them.
- Examples: Could you tell me more about that?
   Could you clarify that?
   I need more detail.
   Is that your policy? What is your policy?
   Why do you feel that way?
- Stop talking! You cannot talk and listen.
- Do not argue the point in your mind.
- Do not put words in their mouth.
- Listen with your heart and mind.
- Summarize or paraphrase what you think you have just heard and ask for confirmation.
- Feedback helps extract facts from feeling and emotions.
- Acknowledge other party on progress; new understanding.

### COLLABORATIVE NEGOTIATION SKILLS FOR THE EDUCATIONAL PLANNING TEAM

### **BASIC HUMAN NEEDS**

### THE HIERARCHY OF NEEDS

The noted Psychologist Abraham Maslow identified these 7 categories of Basic Human Needs.



### COLLABORATIVE NEGOTIATION SKILLS FOR THE EDUCATIONAL PLANNING TEAM

### **COLLABORATION DEFINED**

Collaboration is:

- A Voluntary Relationship
- A Joint Responsibility
- An Attempt to Reach Consensus and Committment
- A Learning Experience
- An Ongoing Relationship

Building Collaboration	
When conflicts are interpersonal or informational, it often helps to address the refor the disagreement rather than the disagreement itself. For example, proceduments such as the following can refocus the team:	
<ul> <li>Let's review what has been said up to now and how we got where we are.</li> <li>What other information do we need?</li> <li>Mr. Johnson and Mrs. Garcia seem to disagree on this matter, what do some of the rest of you think?</li> <li>Rather than saying no to a parent regarding a specific request, ask what do you hope to accomplish with this request? What do you think this request will address and how? The answers to these questions can lead to creative positive problem solving instead of conflict.</li> </ul>	
Remember, if you feel anxious and defensive, so might other members of the team. Sometimes lack of participation is really just anticipation of a conflict or can be unstated conflict. We all tend to avoid situations that make us uncomfortable.	
Keep bringing the focus back to the child's needs, not parents needs, staffs needs, or the system's needs.	
Never discuss money or cost at a meeting.	
Remember everyone needs to feel appreciated.	
Sometimes it is a good idea to come back in 3 to 6 months when there are a lot of complicated issues for a program review to keep the team focused and the plan on track.	
Try to end every conference, meeting and/or phone call with a clear understanding of "next steps". What is going to be done, when it is going to be done, who is going to do it, and how you'll know when it has been accomplished. When practical, put the understandings reached in writing and give those involved a copy.	

### Collaboration

As an I	EP team member, you want to identify the following:		
	What are the child's strengths?		
	What are good reinforcers, what motivates the student to do their best?		
	What are things that parents and/or staff can do to help the child learn?		
	What major concerns do I have about the student at this time?		
	What is happening in school and at home that you feel is important to continue?		
	Factors which contribute to good collaboration:		
	<ul> <li>Environment</li> </ul>		
	Attitude		
	<ul> <li>Commitment</li> </ul>		
	• Continuity		
	• Trust		
	• Respect		
	<ul> <li>Appreciation</li> </ul>		
	<ul><li>Control</li></ul>		
	Knowledge		
	• Experience		

Rosenberg edited from 1996/2003

# Parent-Teacher Collaboration: Assigning Roles

Parent-teacher collaboration is a topic that is commonly overlooked by both parents and members of the Child Study Team. Too often, IEP team collaboration can be mended if both the parents and the CST put forth the effort. In addition, special education advocates need to be involved in the process of building better parent-school relationships. Being that parent-teacher collaboration is mandated by law, best practice says that these relationships should be positive. Additionally, it has been proven that children perform better when parents and districts are working well together. This meetings become adversarial, intimidating, or unproductive due to the poor relationships among those sitting around the table. This lack of parent-teacher fact sheet will provide some strategies to assist school districts, parents, and advocates in collaborating more effectively.

### What districts can do

- Get specific training on collaboration and team building. Invite families to these trainings.
- Create an action plan which will address how to increase and improve communication among the IEP team. ri
- Encourage parems to bring advocates to meetings. ω.
- parents to further encourage parents to bring an Provide a list of advocates or "volunteer" advocate.

4

- given the time and opportunity to communicate parent questions and to ensure the parent is Assign a liaison to be the point person for with the rest of the team. Ś
  - Be flexible to parent visitation and observation to eliminate feelings of suspicion and uneasiness. Ġ
    - Change the environment of the meetings, ie; use a round table, change the seating arrangements, provide refreshments. ۲.
- Encourage student involvement in the meetings to keep the conversation student-focused. 9.
  - these parent group meetings and listen to parent Give parents the opportunity to be involved in Help facilitate parent group meetings. Attend the school community. 0.
- Send it to parents prior to the meeting and ask Develop a written agenda for every meeting. for their feedback.  $\equiv$
- Be sure to address parent concerns in meetings. 12.

### What parents can do

- team building. Invite your district to these Get specific training on collaboration and
- Encourage team involvement in parent groups. 7 K
  - appreciative for what the school is doing for Make THANK YOUs a habit. Be
    - Make it easy for teachers to communicate with you.
- their role will be in advance to clear up any Bring an advocate. Be sure to clarify what misconceptions. 5.
  - Try to avoid emotional responses. Be tempered and rational. 9
    - Be professional. **~** ∞
- Be open-minded. Listen to everyone's ideas and opinions.
- Come to meetings prepared. Organize a list of you get everything accomplished and keep the questions and/or concerns. This will ensure meeting running smoothly. 6
  - Encourage your child to attend the meeting even for a very short period of time. <u>.</u>
    - Don't rehash on past problems. Leave the past behind you and move forward. Ξ.
- school outside the confines of an IEP meeting. Volunteer at your child's school. This will give you the opportunity to interact in the 2

### What advocates can do

- Remember the long-term goals as well as relationship between the family and the the short-term goals. Ultimately, the district is going to be very important! \_;
  - relationship or "feed" negative feelings. Do not cause more damage to the ۲i
- Volunteer your feedback to the parents as observations and suggest ways to well as to the school. Offer your improve. m.
  - parent-school collaboration across the Make a concerted effort to improve 4.
- Train other advocates. The more trained advocates we have, the better! Ś
- your role in the beginning of the meeting Define your role in the beginning of the process with the family. Also, define with the district. 9
- An advocate can approach the situation as - "It is my job to help the district to help 7.

### Managing Conflict

Conflict is inevitable. It occurs in all groups and all relationships. Often it is healthy and causes us to review our own position in the face of new information. Well-managed conflicts result in improved decision-making. Consider the following strategies for managing conflict and resolving problems:

- Start working on the conflict when you first feel it. If you feel defensive, anxious, or negative it will be communicated to people even if you do not verbalize your feelings. Try to identify the issue and share it with the team.
- Remember, if you feel anxious and defensive, other team members may also have those same feelings.
- It's okay to let team members know you have concerns about the meeting,- and you want to go well.
- Good management of conflict is far more important than being right. Look for areas of agreement and work from there. Almost everyone will agree the child's needs are most important, and that must be more than one way to meet those needs.
- Brainstorm alternatives. If people get stuck on conflicting points of view, suggest coming up with two other suggestions.
- Keep disagreements about issues and not personalities.
- Keep bringing the focus back to the child's needs, not yours, theirs, or the systems.
- Most issues are negotiable.

Few people look forward to conflicts, but they are inevitable part of human interactions especially when people on both sides of an issue are personally invested in the outcome. Even though teachers want to be good teachers and parents want the best for their children, it is sometimes difficult to find a common strategy for achieving the goal. Some conflicts can be prevented by resolving small problems; others can be managed in ways in which there are not winners and losers.

### Solving Problems

- Most things are negotiable. Start with that premise when you are working with parents or you child's staff.
- Provide at least two alternatives for every suggestion. (We can try this method or that method. These are the strengths and weaknesses in each. What do you think?' "We can place in this program or that program. These are the advantages and disadvantages of each. Why don't you look at both and see what you think?').
- Teachers or parents do not have to know all the answers. Tell parents or teachers what you think, what you believe, and what you know. Tell them when you don't know, too.
- Keep bringing the focus back to the child's needs-not their needs, your needs, or the systems needs.
- Base program and placement conferences on data, so the child's progress or lack of progress is evident. When you are expressing feelings or opinions identify them as such. This model makes decision-making much easier.
- Try to end every conference, meeting and/or phone call with a clear understanding of 'next steps'. What is going to be done, when it is going to be done, who is going to do it, and how you'll know when it has been accomplished. Put the understandings reached in writing and give those involved a copy.

### Personal Rights

### For Parents

- The right to be true to your values
- •The right to disagree with professionals
- The right to say "no" without feeling guilty
- The right to ask for clarification of terms
- The right to request an appropriate education and services for your child

### For Professionals

- The right to be true to your values
- •The right to disagree and be honest with parents
- The right to be treated with respect

### For Students

- The right to be treated with respect and dignity
- The right to a supportive and safe learning environment
- •The right to an appropriate education
- The right to have choices

### **Professional Checklist**

- •Do I really believe that parents are my equal and, in fact, are experts on their child?
- •Do I show the same respect for the value of parents' time as I do for my own?
- •Do I speak plainly and avoid medical, psychological or social work jargon?
- •Do I actively involve parents in the establishment of a plan of action or treatment and continually review the plan with parents?
- •Do I share information with other professionals to insure both that services are not duplicated and that families do not expend unnecessary energy searching for providers and services?

### **Parent Checklist**

- •Do I believe I am an equal partner with professionals, and accept my share of the responsibility for solving problems and making plans for my child?
- •Do I clearly express my own needs and needs of my family to professionals in an assertive manner?
- •Do I treat each professional as an individual and avoid letting past negative experiences or negative attitudes get in the way of establishing a good working relationship?
- •Do I communicate quickly with professionals serving my child when significant changes or notable events occur?
- •When I make a commitment for a plan of action, do I follow through?
- Do I maintain realistic expectations of professionals, myself and my child?

### A Different Perspective for Staff

Traditional Staff Role

Collaborator Staff Role

"Sage on the Stage"\*

"Guide at the Side"\*

Needs to give directions

Asks questions

Has the ideas

Problem-solves with parents and staff for creative

ideas

Assesses child and reports the child's

development to parents

Asks parent about child and collaborates in

assessment

Recommends goals and objectives and then

asks parent for theirs

Asks parents for goals and objectives and then

supplements when necessary

Feels they should know all the answers

Feels it is appropriate to search for resources and

refer parents to others

Assigns activities for parents to do

at home

Brainstorms ideas with parents to find functional

activities that work for them at home in their daily

routine

Uses technical jargon extensively

Speaks in layman's terms and explains technical

terms that will be used with the child

Expects the parent to look at the professional

as the expert

Helps the parents to recognize their own strengths

and expertise

Source: Project Dakota Outreach

\* Nancy Bell, former Dakota teacher

### Things You Already Know About Meeting with Parents But...Here's A Review Anyway

### DO

### *DO NOT EVER*

Make the first contact be bad news or a big meeting.

Just before the meeting begins, calm yourself, visualize the student, recall his strengths, prioritize any concerns, step into the parents' shoes briefly.

Talk down to or judge parents' decisions - assume the parents are not distressed because they appear strong.

Understand and enjoy differences. Request interpreters or signers.

Rely on disability, social, economic or cultural stereotypes.

Remove physical barriers. Use positive listening, nondefensive body language.

Sit behind your desk. Eat or drink without enough for everyone present.

Assume parents know their child best. Your common goals are student growth.

Be an expert. Make unfounded predictions.

Use specific examples and everyday language. Describe

Use jargon or subjective and emotionally loaded terms.

behavior objectively.

Talk too much. Make parents feel inadequate when they

Listen — then give a few practical suggestions.

Maintain confidentiality.

can't do what you suggest. Use names of other children.

Model teamwork in working with other educators.

Disagree with school staff in parents' presence.

Conclude the meeting with hope, with the parents' belief that you know and respect their child and have a plan.

Leave a parent feeling hopeless or that financial or staffing concerns will interfere with meeting their child's needs.

There is an important difference between knowledge and wisdom. Knowledge is observable in action, skills that can be taught, curriculum that can be mastered. Wisdom is applying this knowledge after learning from our life experiences and reaching into our soul. It is through wisdom (Humility, Humanity, Honesty, and Humor) that we will come to first know ourselves and then be more effective in working with parents. We are all in the process of gaining this wisdom. The qualities that will have the most impact on our students are already within us.

**CASP Today** 

### IEP Team Meeting Agenda

- **!.Introductions**
- II.Purpose of the meeting
- III.Discuss time parameters
- IV.Parent Rights.
- V.Signature for Notice of Meeting and Extension of Timeline
- VI.Review progress on previous goals and objective
- VII.Review current assessments

0T - Bobbi.

APE - Aileen

Teacher Report - Gary

Resource Report - Lorie

Counselor Report - Lorie

Speech Language - Anita

Nurse's Report - Marilyn

Psychological Report - William

Parent Concerns - Victoria and John

VIII.Review eligibility criteria

IX. Develop new goals and objectives

X.Consider special factors

Behavior

**Assistive Devices** 

Medical Aide

Other

- XI.Discuss placement continuum
- XII.Determine appropriate placement and services

### XIII.Summarize

Review decisions and responsibilities for next steps Confirm starting dates for placement/services Clarify next scheduled review date

Sign all required forms

Mom: Job Description

Position: Mom. Mama. Mother

**Job Description:** 

Long term team players needed for challenging permanent work in an often chaotic environment. Candidates must possess excellent communication and organizational skills and be willing to work variable hours, which will include evenings and weekends and frequent 24 hour shifts on call. Some

overnight travel required, including trips to primitive camping sites on rainy weekends and endless

sports tournaments in far away cities. Travel expenses not reimbursed. Extensive courier duties also

required.

Responsibilities:

For the rest of your life. Must be willing to be hated, at least temporarily, until someone needs \$5. Must

be willing to bite tongue repeatedly. Also, must possess the physical stamina of a pack mule and be able to go from zero to 60 mph in three seconds flat in case, this time, the screams form the backyard

are not someone just crying wolf. Must be willing to face stimulating technical challenges, such as

small gadget repair. Mysteriously sluggish toilets and stuck zippers. Must screen phone calls, maintain

calendars and coordinate production of multiple homework projects. Must have ability to plan and

organize social gatherings for clients of all ages and mental outlooks. Must be willing to be

indispensable one minute, an embarrassment the next. Must handle assembly and product safety

testing of a half million cheap, plastic toys and battery operated devices. Must always hope for the best

but be prepared for the worst. Must assume final, complete accountability for the quality of the end product. Must be prepared to not be appreciated for any of your effort. Responsibilities also include

floor maintenance and janitorial work throughout the facility. Additional volunteer hours are also

required: baking, babysitting, collaborating with educational staff, attend multiple meetings, and any

last minute requests with a smile.

Possibility for Advancement and Promotion:

Virtually none. Your job is to remain in the same position for years without complaining, constantly

retraining and updating your skills (at your own cost), so those in your charge can ultimately surpass

you.

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### IEP Goal Worksheet Packet

The following suggestions are not things you must do, but ideas for you to consider as you prepare for your child's IEP meeting.

Preparing for the IEP meeting:

Prepare by talking to your child, your child's teachers, other parents. Consider visiting the classroom. Write your own ideas for the IEP, and your expectations for your child. You are to be fully involved in the development of your child's program. Find out who will participate in the meeting by calling the school.

Get a copy of your child's current assessments and review them before the IEP, making sure you understand what is contained in the reports.

Review your child's current IEP.

You do not have to go alone. It always helps to have someone come to the meeting with you.

You can tape record the meeting if you wish. Recording must be done openly, with the knowledge of all meeting participants. Notify school district 24 hours before the meeting of your intent to use a tape recorder.

### At the IEP meeting:

Do not accept a pre-written IEP that you have had no part in developing. You are to be part of the IEP development team.

Gather support for your point of view. If the district staff refuses to include something you feel is necessary, have them clarify whether they think it is not needed, or if it is needed but not available. Try to get supportive participants to state their opinion and take detailed notes to document the conversations.

Placement or related services should be discussed only after the goals and objectives are completed. Placement includes all services.

Do not sign the IEP until you have considered it carefully. You do not need to sign it at the meeting, and may take it home to consider, with the intention of returning it in a timely manner.

If you disagree with the school district, you may write a dissenting statement and attach it to the IEP. Only components with which you agree can be implemented.

IEP Training, Northern California Coalition, DREDF, Matrix and Parents Helping Parents, 1998.

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## My IEP Meeting

Individualized Education Plan

### THE SIX STEPS TO

### "TAKE CHARGE FOR THE FUTURE"





THINK **POSITIVE** AND DREAM ABOUT **YOUR** FUTURE

2, SET GOALS



DECIDE WHAT YOU ARE GOING TO DO NOW AND WHO WILL HELP YOU

3. ORGANIZE A MEETING



HOLD A MEETING WITH PEOPLE WHO CAN HELP YOU ACHIEVE YOUR GOALS

4. PROBLEM-SOLVE





5. PREPARE

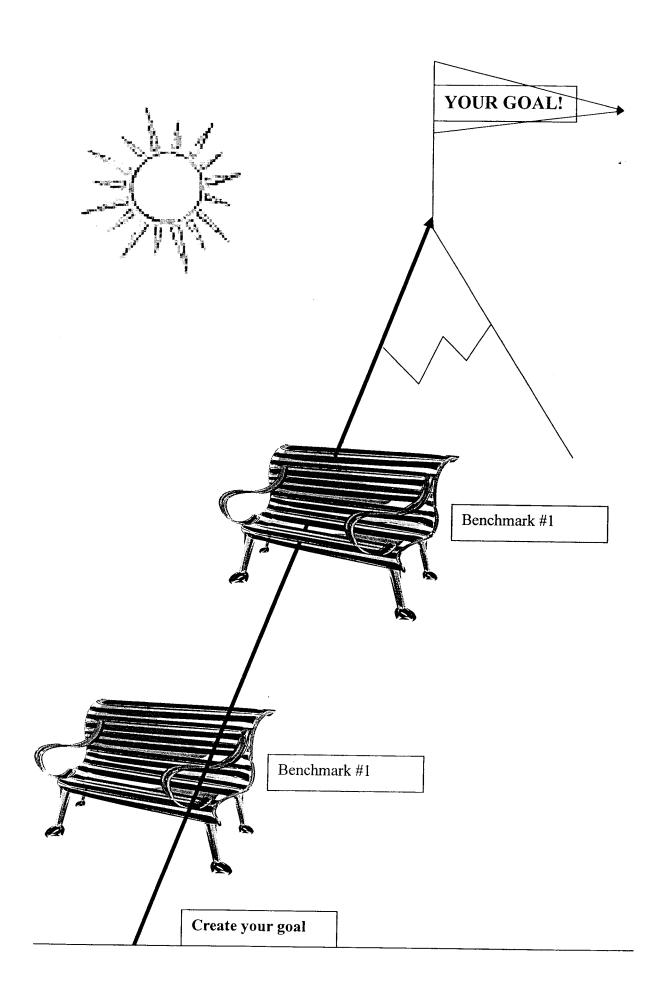


GET READY AND TAKE ACTION

6. KEEP IT GOING



REVIEW WHAT YOU'VE LEARNED AND INDENTIFY YOUR **NEXT STEPS** 



### IEP Script for Student's Annual or 3 Year Re-evaluation Review <u>Meeting Reminders</u>

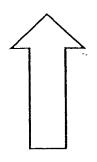
Sit up	•	
Look up at the people in the room		
Speak up so eve	eryone can hear you	
Smile and demo	nstrate eye contact	
Be prepared for your meeting by		
becoming	familiar with the meeting process and agenda	
	e or dictate your student report, get it to school 5 days or to IEP	
	e your parent write their report and get it to school 5 days r to the IEP	
■ mee	et with teacher and draft goals and benchmarks (see form)	
Student and pare	ent reports should include:	
✓	list student's strengths, special talents at home and school.	
✓	list student's weaknesses and areas of concerns.	
✓	write a paragraph describing the student, who the student is/who you are as a person-not just a student.	
	if you could wave a <u>"magic"</u> wand, list what would help the student/you be successful-what has worked and what doesn't work.	



### Meeting Reminders

Sit Up





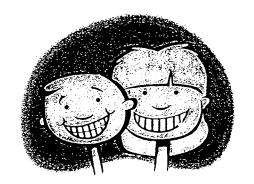
Look Up





Speak Up & Listen

**Smile** 



### **Optional Script for Chairing Your IEP Meeting**

❖ Welcome & Introductions



Hello and welcome to my (annual or 3 year re-evaluation) meeting. Thank you for being a part of my team for success. Would everyone introduce themselves to the team. My name is \_\_\_\_\_ and I will be chairing this meeting.

The Purpose of This Meeting



(A) The purpose of this meeting is to discuss my annual IEP. For the annual say—we will be reviewing my progress towards my goals, hearing teacher reports, my student report, parent report, special education teacher's report, any standardized assessments, alternative evaluation tools—such as work samples, observations or alternative assessment measures.

OR

(B) The purpose of this meeting is to discuss my 3 year reevaluation. The IEP team will review assessments by the nurse, psychologist, special education teacher, general education teacher's, my student report parent report, alternative evaluations tools-such as work samples, observations, or other assessment measures.

### Hand out the IEP agenda

ullet This is the agenda we will be following for my meeting.



Review of Student and Parent Rights/Procedural
Safeguards



- Staff will hand you your parent or guardian the parent's rights packet
- Review of Reports and Present Levels of Performance
  - An important part of my IEP is to share my student report about my progress
    - Another important part of my IEP is my families input on my progress, Mom and Dad would you share your report now. (Wait for their response)
  - ◆ We will now review my present levels of performance. The teacher's will speak first. Then the other professionals will report. Can you tell me how I am doing according to your reports. What do you see as my strengths and areas which need additional improvement?
- At the End of the Meeting remember to Thank Everyone for Coming
  - I want to thank everyone for coming to my IEP meeting. I appreciate your support.
- Make Sure to Send out Thank You Notes to Each Member of the IEP Team and Make Sure to Include one to Your own Family

### Six Steps to Taking Charge for the Future

### 1. Dream

Think positive and dream about your future

My dream is:

### 2. Set Goals

Decide what you are going to do **now** and who will **help** you

My goal is:

### 3. Organize a Meeting

Hold a meeting with people who can help you achieve your goals

### 4. Problem - Solve

Figure out **how** you are going to accomplish the goals

Things I need to reach my goal:

These people can support me:

### 5. Prepare

Get ready and take action

### 6. Keep it Going

Review what you have learned and identify your next steps, ask for help if you need it

### Issues for Older Students the IEP Must Address

At age 14, the IEP must also address transition services needed that focus on the course of study (such as participation on advanced placement courses or a vocational education program);

At 16 or younger, a statement of needed transition services including a statement of interagency linkages or responsibilities;

Beginning at least one year before the student reaches the age of majority (18 in California) a statement that the student has been informed of the rights that will transfer to him when he reaches that age.

### Special Factors the IEP Team Must Consider

- 1. Positive behavioral supports and interventions for students whose behaviors disrupt their learning, or that of others;
- 2. Students' language needs, for students with limited English proficiency;
- 3. Instruction in Braille and the use of Braille for visually impaired students, unless the IEP team determines it is not necessary;
- 4. The child's communication needs:
- 5. The student's need for assistive technology devices and services.

### Extended School Year Services

Some children with disabilities might require more than the usual number of school days in order to receive an appropriate education. Under the California Education Code, the need for extended year services must be documented in the LEP. The services must be comparable in standards, scope and quality to the special education program offered during the regular academic year.

### Ineligibility

What can a parent do when assessments have been done and school district personnel assert that the student is not eligible for special education services?

First, the parent will want to fully understand the school district's eligibility standards. Each school district has a Local Plan which outlines how students become eligible for special education services. Parents will also want to know specifically why school district personnel believe that the student does not qualify for special education services. Parents can ask to receive these reasons in writing.

If school district personnel have not convinced the parent that special education services are not needed, parents can respond in a number of ways, depending on what is appropriate to their unique situation. There are informal and formal channels for resolving conflicts/disagreements, including disagreements about eligibility. The California Department of Education's Procedural Safeguards Referral Service (800-926-0648) for more information.

If the parent is satisfied that their child is not eligible for special education services, the student's disability will probably qualify them for accommodations under Section 504 of the Rehabilitation Act of 1973. Parents should obtain their school district's 504 policy and as much additional information as possible about accommodations for students whose disabilities negatively impact their education.

IEP Training, Northern California Coalition, DREDF, Matrix and Parents Helping Parents, 1998,

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### Questions To Ask At An IEP Meeting

- 1. Where will my child be throughout the day, including recess and special services? Is all of that area physically accessible to my child?
- 2. Has the teacher who will implement the IEP ever worked with a child like mine? If not, who will educate the teacher about students with special needs in general and mine in particular?
- 3. Will an aide be available to increase individual attention and/or assist with toileting, etc?
- 4. Does the proposed program for placement actually exist? Can the program be implemented with existing staff or will additional staff need to be hired? What makes this placement appropriate to my child's needs?
- 5. How many students will be in my child's class at one time?
- 6. How does the proposed program differ from the one my child has been in before?
- 7. How does the academic program compare to the school's regular academic program? What makes it different?
- 8. How is the instruction designed to meet my child's unique needs?
- 9. What related services (speech, occupational therapy, etc.) does my child qualify for? What is the frequency and duration and will they be offered in a group or individually?
- 10. How will my child make up class work that is missed during related services sessions?
- 11. Will my child have the opportunity to interact with students who are not disabled?
- 12. How will teacher and therapist absences be handled?
- 13. Do summer services need to be planned?
- 14. What disciplinary actions are appropriate or inappropriate?
- 15. What does the school expect from me (the parent) in order to help my child reach his or her goal?

16. Are there other parents of disabled students in the school who would be willing to speak with me about the school's programs?

### Present Levels of Educational Performance:

- 1. What areas are covered?
- 2. What assessment was done in the skills area?
- 3. When?
- 4. Was the assessment thorough?
- 5. Do the results correspond to your knowledge of your child's ability?

### Annual Goals:

- 1. Are they based on assessment of your child's present performance?
- 2. What changes are expected in your child's behavior?
- 3. Given your knowledge of your child, are they appropriate?

### Short-term Instructional Objectives:

- 1. Will they help your child reach the stated goals?
- 2. Can your child's progress on each objective be measured?
- 3. Could you tell if your child had mastered an objective?

### Evaluation and Review Date:

- 1. How will your child's program be measured?
- 2. When will the IEP team meet to review the IEP?

From Sacramento City Unified School District's CAC Special Education Parent Handbook and IEP Training, Northern California Coalition, DREDF, Matrix and Parents Helping Parents, 1998.

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# AN EDUCATIONAL GOAL SETTING GUIDE FOR PARENTS

One of the most - if not the most - important thing that you, as a parent, can do is to participate in the identification of goals for your child. When teachers and other professionals have some idea of what you would like to see happen for your child they will be better able to provide services and programs that help meet your expectations. There is no one more qualified to write a goal for your child than you, the parent. You know your child better than anyone else and you are legally in charge of his/her life. It is reasonable that you suggest goals for your child.

GOALS - what are they?

Goals are statements about things we're aiming to do, get or become. Setting goals for ourselves, and systematically working toward them, is a way of turning an ambition or desire into a reality. If you know what your want, you are more likely to get it.

Setting educational goals for pupils is an important part of planning an appropriate instructional program. Educational goals are statements that tell what skills or behaviors the teacher and pupil are aiming for. Annual goals, such as "will be able to dress himself," may be steps along the way to life goals like, "will be independent," and represent a specific set of skills that the child will hopefully master over the school year.

#### SETTING GOALS

Parents can make a real contribution to the design of their child's educational program when they take some time to think about goals that they would like to see their child reach. These goals can then be discussed at meetings with school personnel.

The following exercises are designed to give you practice in identifying essential, realistic, and reach able goals for your child.

Remember: An educational goal describes a skill or behavior you would like to see your child learn or do better.

...AND our child's acceptance or interest is very important since goals are personal aims or ambitions.

Goals can also be written to say what teachers and parents are expected to do.

IEP Training, Northern California Coalition, DREDF, Matrix and Parents Helping Parents, 1998.

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# GOALS AND OBJECTIVES

Goals - There is not a mystery about academic goal setting. Most of us set goals and systematically work toward them as a way of turning our dreams or ambitions into our reality.

Goals as used in educational planning identify the skill, academic or behavior area to focus on, indicate the direction of change and the desired level of achievement.

# Developing Annual Goal Areas

- For each developmental or academic area needing specially designed instruction, determine how narrow or global the goals should be by identifying clusters of behaviors that are related
- · Considerations:

O Primary concerns stated	on the initial	referra
---------------------------	----------------	---------

- O Amount of time the student has left in school and the age of the student
- O Skills needed to progress to the next level of performance
- O Skills needed to be successful in the regular classroom
- O Behavior/skills that will improve with modifications,
- O Strengths of the student
- O Concerns of the parents for enhancing their child's education
- O Scope and sequence of the skills, curriculum or behaviors to be addressed
- O Special factors (as described in the preceding section)
- O Student's learning behaviors



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Natm Line

# Objectives/Benchmarks

Benchmarks are major milestones; short-term objectives are measurable, intermediate steps that move the student toward achieving their goals. They are to be measurable and accomplished over an extended period of time, such as a school quarter or grading period.

Parents can make real contributions to the JEP process by being clear about the goals they feel are important to their child. You are not expected to be an expert goal writer but you do know what your child needs to work on and how your child might be most successful in achieving educational goals.

Since goals in the IEP are usually written for one year, they are referred to as annual goals. They are based on the present level of educational performance and can be set in many different areas, but most of them are in one of the following categories:

- · Academic Skills (e.g., reading, writing, spelling, math)
- · Self-help Skills (e.g., eating, dressing, bathing, shopping)
- · Leisure and Recreational (e.g., learning to use community resources)
- Communication (e.g. speaking, using sign language, or other means to understand and respond to others)
- Motor Skills (e.g. movement, balance, muscle strength and coordination)
- Social Behavioral (e.g., manners, maintaining relationships, learning appropriate behaviors)

Use the following worksheets to begin planning for your child's IEP.

This material is adapted from materials provided by Nancy Johnson, Educational consultant, NC Dept. of Public Instruction IEP Training, Northern California Coalition, DREDF, Matrix and Parents Helping Parents, 1998.

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# Your child might have an IEP."

In talking with families many seemed confused about whether their child had an IEP through the school. To assist families in determining whether their child has an IEP, we felt it would be helpful to apply the Foxworthy test.

If you have ever attended a meeting at school with 25 professionals... your child might have an IEP.

If you are the only one wearing jeans.... your child might have an IEP.

If these professionals speak a different language.... your child might have an IEP.

If the meeting room was the size of a closet... your child might have an IEP.

If you have ever been asked, "do you think your child is the only one in the district?"...your child might have an IEP.

If you have ever heard, "we do not have money for that!"... your child might have an IEP.

If you have ever been called an "overprotective, hysterical parent" or an "uninvolved parent"... your child might have an IEP.

If you have ever been told your child "will just grow out of it", "is lazy", "slow", irresponsible", "immature and/or sensitive" etc...etc... your child might have an IEP.

If you feel you have walked into "Assertiveness Training 101" by accident...your child might have an IEP.

If you have ever been screamed at by a school official...your child might have an IEP.

If you have ever been told your child will be lucky to grow up and dig ditches...your child might have an IEP.

If it has ever been suggested to move to another District...your child might have an IEP.

If you have ever been invited to home school your child... your child might have an IEP.

If you have ever called the school and asked for your child and were told "we do not have anyone here by that name..." your child might have an IEP.

If your family is ever discussed in the teachers lounge... your child might have an IEP.

If every time you call the school board office, the person you need to talk to is in a meeting...you might have an IEP.

If a meeting with the school has ever been rescheduled more than twice to the time you definitely can not come...your child might have an IEP.

If you have ever been patted on the shoulder and called "honey" by the principal...your child might have an IEP.

If it has ever been suggested all your child needs is a "good spanking to straighten him/her up..." your child might have an IEP.

If you have been asked by a teacher to "just sign it!"... your child definitely has an IEP...

If you have ever been called Ms Whitesomething... your child might have an IEP.

If you know your advocate's phone and fax number by heart...your child might have an IEP.

If you have ever been forced into due process, state court, the district court of appeals, federal court, or the federal circuit court on a fast track to the US Supreme Court... your child might have an IEP.

If you are known as a due process queen... your child might have an IEP.

If you can quote federal statutes in your sleep...your child might have an IEP.

If you have ever requested your child's records and it took two years to receive them...your child might have an IEP.

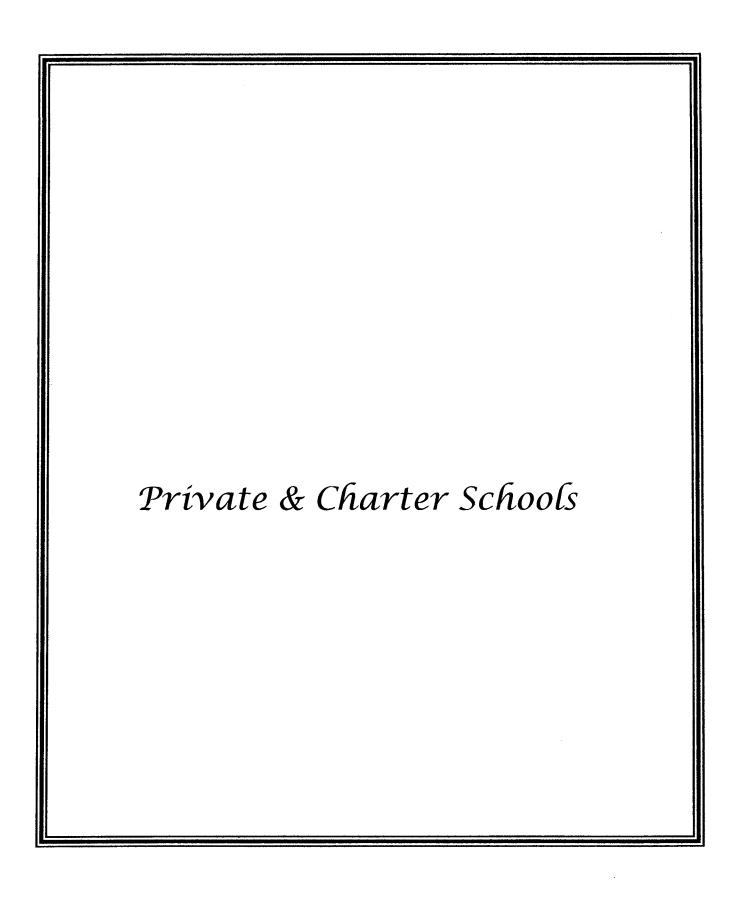
If you have ever been told, the district doesn't care if you sign the IEP or not, services have ceased...your child might have an IEP.

If you have crossed out the words "Procedural Safeguards" on your copy and written in "Procedural Land Mines"... I know I have...then your child definitely has an IEP...for what it's worth.

If a new teacher went to pull your child's cumulative records and had to make two trips to get it; your child might have an IEP

Your child might have an IEP/ you've been through a Due Process if [enter state DOE legal head here] knows you.

Your child might have an IEP/you've been through a Due Process if you sign all your letters, " I look forward to your written response on or before ten (10) business days."



# Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools

# Revised April 2011

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the <u>Federal Register</u> on August 14, 2006, and became effective on October 13, 2006. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, advocacy organizations, and other interested parties with information regarding the requirements for serving children with disabilities placed by their parents in private schools. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

The IDEA and its implementing regulations contain a number of significant changes for parentally placed private school children with disabilities. Section 612(a)(10)(A) of the IDEA and 34 CFR §§300.130 through 300.144 now require that the LEA, after timely and meaningful consultation with private school representatives, conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools *located within the LEA* regardless of where those students *live*. These requirements make clear that the obligation to spend a proportionate amount of IDEA Part B funds to provide services to children with disabilities enrolled by their parents in private schools now refers to children enrolled by their parents in private elementary schools and secondary schools "in the school district served by a local educational agency." Other key changes relate to the consultation process, calculation of the proportionate share, and standards applicable to personnel providing equitable services.

This Q&A document supersedes the Department's guidance, entitled *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools* issued in March 2006 and January 2007 and includes additional topics that have arisen as the field has implemented the regulations. Some of the new questions reflect recent policy letters that have been issued, while others address common questions that OSEP receives. New topics include:

• Location of Services and Transportation—addressing how an LEA determines where equitable services are provided and whether transportation is required.

- Property, Equipment, and Supplies—addressing whether Part B funds for equitable services may be used to place equipment and supplies in a private school or be used for repairs, minor remodeling, or construction of private school facilities.
- Out-of-State Children with Disabilities—addressing the responsibility for determining and paying for services provided to out-of-State parentally placed private school children with disabilities.
- Home-Schooled Children with Disabilities—addressing child find and services for children with disabilities who are home-schooled.
- Children in For-Profit Private Schools—addressing whether children enrolled in a forprofit private school are counted in determining the proportionate share and whether they are eligible to receive equitable services.

In addition to these new topics, questions have been added to address the consultation process, response to intervention (RTI), the process for developing a services plan, the difference between a services plan and an individualized education program (IEP), child find, and child count.

Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of the IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and the regulations are found at <a href="http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C">http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C</a>.

If you are interested in commenting on this guidance, please e-mail your comments to <u>OSERSguidancecomments@ed.gov</u> and include Private Schools in the subject of your e-mail or write us at the following address: Ruth Ryder, U.S. Department of Education, Potomac Center Plaza, 550 12<sup>th</sup> Street, S.W., room 4108, Washington, DC 20202.

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# A. Consultation with Private School Representatives and Representatives of Parents of Parentally Placed Private School Children With Disabilities

Authority:

The requirements for consultation are found in 34 CFR §300.134.

**Question A-1:** 

What is consultation?

Answer:

As used in the regulations, consultation is a mandatory process that involves discussions between the LEA, private school representatives, and representatives of parents of parentally placed private school children with disabilities on key issues relating to the equitable participation of eligible private school children with disabilities in Federally funded special education and related services. (See more on the provision of equitable services in Parts C and D of these questions and answers.) Each LEA (or, if appropriate, an SEA) must consult, in a timely and meaningful way, with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for parentally placed private school children. Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered by the LEA before the LEA makes any decision that has an impact on services to parentally placed private school children with disabilities. Timeliness is critical to effective consultation and requires collaboration between the LEA and private school officials in developing a timeline and selecting dates for consultation. Successful consultation establishes positive and productive working relationships that make planning easier and ensure that the services provided meet the needs of eligible parentally placed private school children with disabilities.

A unilateral offer of services by an LEA with no opportunity for discussion is not adequate consultation, as such an offer does not meet the basic requirements of the consultation process. Only after discussing key issues relating to the provision of special education and related services with all representatives may the LEA make its final decisions with respect to the services to be provided to eligible private school children with disabilities.

Question A-2: What must the consultation process include?

Answer:

Apart from specifying certain topics that must be addressed during consultation, the regulations offer LEAs and private schools a great deal of flexibility in conducting the consultation process. However, in accordance with 34 CFR §300.134, discussion between public school and private school officials must address--

- The child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;
- The determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated;
- How the consultation process among representatives of the agency, the private schools, and the parents of parentally placed private school children will take place, including how the process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- How, where, and by whom special education and related services will be provided, including a discussion of types of services--including direct services and alternate service-delivery mechanisms, as well as how the services will be apportioned if funds are insufficient to serve all children--and how and when decisions regarding services will be made; and
- How, if the LEA representatives disagree with the views of the private school officials on the provision of services or the types of services whether provided directly or through a contract, the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school officials.

Question A-3: What records on consultation must an LEA maintain?

Answer:

When timely and meaningful consultation has occurred, the LEA must maintain documentation that the consultation has occurred, including a written affirmation signed by the representatives of the participating private schools, as required by 34 CFR §300.135. Some have asked if signing an attendance sheet at a meeting is all that is needed to document adequately

that timely and meaningful consultation has occurred. Though these attendance sheets provide an accounting of who has attended meetings, the sheets themselves do not provide evidence that ongoing consultation has occurred. Therefore, the written affirmation signed by the representatives of the participating private schools should reflect that those officials have indeed participated in timely and meaningful consultation that has continued throughout the school year. If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

#### **Question A-4:**

How can the consultation process be carried out effectively? Are there any consultation models available?

#### Answer:

There are a number of ways to carry out the consultation process. As such, the Department does not endorse any specific consultation model. Examples of consultation practices that have proven to work for LEAs include establishing a private school working group to serve as the vehicle for ongoing consultation. In selecting members for this group, LEAs may contact larger private school organizations such as the Catholic Schools Office in the local diocese or the Board of Jewish Education for the region. Groups such as these can help facilitate communication between their member schools and the LEAs in which they are located. Also, establishing a timeline for consultation can help ensure that timely and meaningful consultation occurs throughout the school year. The timeline can include meeting dates and times as well as topics to be discussed.

In addition, in February, 2008 the Office of Non-Public Education published a booklet entitled *The Individuals With Disabilities Education Act (IDEA): Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools,* which explains the provisions related to, and benefits available to, children with disabilities who are enrolled by their parents in private schools when a free appropriate public education (FAPE) is not at issue. A copy of this booklet can be found at: <a href="http://www2.ed.gov/admins/lead/speced/privateschools/index.html">http://www2.ed.gov/admins/lead/speced/privateschools/index.html</a>.

#### B. Child Find and Individual Evaluations

Authority:

The requirements for child find for parentally placed private school children with disabilities are found in 34 CFR §300.131.

**Question B-1:** 

Which LEA is responsible for conducting child find for parentally placed private school children?

Answer:

Under 34 CFR §300.131, the LEA where the private school is located is responsible for conducting child find for parentally placed private school children. The child find requirements for parentally placed children make clear that the LEA, after timely and meaningful consultation with private school representatives, must conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools *located in the LEA*. (Under the prior provisions of the IDEA, the responsibility to conduct child find for parentally placed private school children rested with *the LEA in which the children resided*.)

**Question B-2:** 

What are the LEA's responsibilities for identifying children with disabilities placed by their parents in private schools?

Answer:

Under 34 CFR §300.131, the LEA is responsible for locating, identifying, and evaluating all children with disabilities who are enrolled by their parents in private, including religious, elementary schools, as defined in 34 CFR §300.13, and secondary schools, as defined in 34 CFR §300.36, located in the LEA. The LEA, in conducting child find for parentally placed private school children with disabilities, must undertake activities similar to activities undertaken for the agency's public school children. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA. The LEA where the private elementary or secondary school is located has a number of options as to how it meets its child find responsibilities. For example, the LEA may assume the responsibility itself, contract with another public agency (including the public agency where the child resides), or make other arrangements by contracting with a third party to conduct child find activities.

Child find is an ongoing process. Therefore, if a child who enters a private school without having been previously identified as a child with a disability is suspected of having a disability during the school year, the LEA where the private school is located is responsible for ensuring such a child is identified, located, and evaluated. In addition, it is possible that a

child who was previously evaluated and determined not eligible for special education and related services by another LEA, may in fact be determined eligible for special education and related services at a later time through the child find process conducted by the LEA where the private school is located.

#### **Question B-3:**

May an LEA require a private school to implement a response to intervention (RTI) process before evaluating parentally placed private school children?

#### Answer:

No. The IDEA and its implementing regulations in 34 CFR §§300.301-300.311 establish requirements with which LEAs must comply when conducting an initial evaluation to determine if a child qualifies as a child with a disability under Part B; these requirements do not apply to private schools. IDEA requires States to adopt criteria for determining whether a child has a specific learning disability, as defined in 34 CFR §300.8(c)(10), and these criteria must permit, among other things, the use of a process based on the child's response to scientific, research-based intervention (known as RTI). 34 CFR §300.307(a)(2). Thus, although IDEA permits the use of RTI in evaluating children suspected of having learning disabilities, it does not require LEAs to use RTI. Even if a State's criteria permit LEAs to use RTI in evaluating children suspected of having learning disabilities, IDEA does not require an LEA to use RTI for parentally placed children attending private schools located in its jurisdiction. It would be inconsistent with the IDEA evaluation provisions in 34 CFR §§ 300.301-300.311 for an LEA to delay the initial evaluation because a private school has not implemented an RTI process with a child suspected of having learning disabilities and has not reported the results of that process to the LEA.

#### **Question B-4:**

Is it possible for a parent to request evaluations from the LEA where the private school is located as well as the district where the child resides?

#### Answer:

The Department recognizes that there could be times when parents request that their parentally placed child be evaluated by different LEAs if the child is attending a private school that is not in the LEA in which the child resides. For example, because most States generally assign the responsibility for making FAPE available to the LEA in which the child's parents reside, and because that could be an LEA that is different from the LEA in which the child's private school is located, parents could ask two different LEAs to evaluate their child for different purposes at the same time. The Department, however, does not encourage this practice.

Note that a new requirement in 34 CFR §300.622(b)(3) requires parental consent for the release of information between LEAs about parentally placed private school children. Therefore, as a practical matter, one LEA may not know that a parent also requested an evaluation from another LEA. However, the Department does not believe that the child's best interests would be served if parents request evaluations of their child by the resident LEA and the LEA where the private school is located, even though these evaluations are conducted for different purposes. Subjecting a child to repeated testing by separate LEAs in close proximity of time may not be the most effective or desirable way to ensure that the evaluations are meaningful measures of whether a child has a disability, or of obtaining an appropriate assessment of the child's educational needs. Although the Department discourages parents from requesting evaluations from two LEAs, if the parent chooses to request evaluations from the LEA responsible for providing the child FAPE and from another LEA that is responsible for considering the child for the provision of equitable services, both LEAs are required to conduct an evaluation.

#### **Question B-5:**

Does the LEA where the private school is located have an obligation to make an offer of a free appropriate public education (FAPE)?

#### Answer:

The LEA where a child attends private school is responsible for ensuring equitable participation. If a parentally placed private school child also resides in that LEA, then the LEA would be responsible for making FAPE available to the child, unless the parent makes clear his or her intent to keep the child enrolled in the private elementary or secondary school located in the LEA. If a parentally placed private school child resides in a different LEA, the district in which the private elementary or secondary school is located is not responsible for making FAPE available to that child, but the LEA of the child's residence would be responsible for making FAPE available to that child..

If a determination is made through the child find process by the LEA where the private school is located that a child needs special education and related services and a parent makes clear his or her intent to keep the child enrolled in the private elementary or secondary school located in another LEA, the LEA where the child resides is not required to make FAPE available to the child. However, if the parents choose to accept the offer of FAPE and enroll the child in a public school, then the LEA where the child resides is obligated to make FAPE available to the child.

**Question B-6:** 

Why is it important to identify the number of parentally placed private school children with disabilities located in the LEA where the private school is located?

Answer:

An accurate count of the number of eligible private school children with disabilities enrolled by their parents in private schools located in the LEA is needed to calculate the proportionate share of Part B funds that the LEA must expend annually for services for parentally placed private school children with disabilities.

**Question B-7:** 

What specific child count information must the LEA maintain and report to the SEA?

Answer:

The regulations in 34 CFR §300.132(c) require the LEA to maintain in its records and provide to the SEA the number of parentally placed private school children evaluated, the number of parentally placed private school children determined to be children with disabilities under Part B of the IDEA, and the number of children who are provided equitable services.

**Question B-8:** 

What are the LEA's responsibilities for reevaluations of parentally placed children?

Answer:

The LEA where the private elementary school or secondary school is located is responsible for conducting reevaluations of children with disabilities enrolled by their parents in the private elementary schools and secondary schools located in the LEA. Under 34 CFR §300.303, an LEA must ensure that a reevaluation of each child with a disability is conducted if (1) the LEA determines that the child's educational or related services needs, in light of the child's academic achievement and functional performance, warrant a reevaluation; or (2) the child's parent or teacher requests a reevaluation. A reevaluation may occur not more than once a year, unless the parent and LEA agree otherwise; and must occur at least once every three years, unless the parent and LEA agree that a reevaluation is unnecessary.

**Question B-9:** 

What is the difference between child find under 34 CFR §§300.111 and 300.131?

Answer:

The child find provision in 34 CFR §300.111 addresses the responsibility of a State to conduct child find for all children with disabilities residing in the State, including children with disabilities attending private schools. It ensures that all children with disabilities residing in the State are

identified, located, and evaluated. Section 300.111, which applies to States, is much broader in scope than §300.131.

The child find provision in 34 CFR §300.131 addresses the responsibility of the LEA where the private school is located to conduct child find for all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the LEA. This provision addresses which children enrolled in private elementary schools and secondary schools by their parents are eligible to receive services under the IDEA.

#### Question B-10:

May amounts expended for child find, including individual evaluations, be deducted from the required amount of Federal funds to be expended on services for parentally placed private school children with disabilities?

#### Answer:

No. There is a distinction under the IDEA between the obligation to conduct child find activities, including individual evaluations, for parentally placed private school children with disabilities, and the obligation to use an amount of funds equal to a proportionate amount of an LEA's subgrant to provide special education and related services to parentally placed private school children with disabilities. The obligation to conduct child find, including individual evaluations, exists independently from the obligation to provide equitable services. The costs of child find activities, such as evaluations, may not be considered in determining whether the LEA has spent an appropriate amount on providing special education and related services to parentally placed private school children with disabilities. See 34 CFR §300.131(d).

#### Question B-11:

In conducting the individual evaluations of children suspected of having disabilities who are enrolled in private schools by their parents, may an LEA exclude children suspected of having certain disabilities, such as those with specific learning disabilities?

#### Answer:

No. The LEA where private elementary schools and secondary schools are located must identify and evaluate all children enrolled in those schools who are suspected of having a disability as defined under 34 CFR §300.8. LEAs may not exclude children suspected of having certain disabilities, such as those with specific learning disabilities, from their child find activities. The Department recommends that LEAs consult with officials from private elementary schools and secondary schools on how best to implement the State's evaluation criteria for identifying children with specific learning disabilities enrolled in private schools by their parents.

Question B-12: If the LEA where the private elementary or secondary school is located

conducts an individual evaluation on a child and the parents disagree with the evaluation and wish to have an independent educational evaluation (IEE) conducted, to which LEA must the parents bring their request--the LEA where the private school is leasted on the LEA where the private school is leasted on the LEA where the private school is leasted on the LEA where the private school is leasted on the LEA where the private school is leasted on the LEA where the private school is leasted on the LEA where the private school is leasted on the LEA where the private school is leasted on the LEA where the private school is leasted on the least the parents of the parents disagree with the evaluation (IEE)

where the private school is located, or the LEA where the child resides?

**Answer:** Parents would request an IEE from the LEA that conducted the evaluation

with which the parents disagree.

# C. Equitable Services

Authority:

The requirements for equitable services are found in 34 CFR §§300.132, 300.137, and 300.138.

Question C-1:

What is the definition of the term "equitable services"?

Answer:

Equitable services are services provided to parentally placed private school children with disabilities in accordance with the provisions in the IDEA and its implementing regulations in 34 CFR §§300.130 through 300.144.

Under the IDEA, LEAs have an obligation to provide parentally placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the LEA has determined, after consultation, to make available to its population of parentally placed private school children with disabilities. The amount of Part B funds available for these services is based on the proportionate share calculation, which is discussed in the Expenditures section of this document,

The consultation process is important to ensure the provision of equitable services. How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities is determined during the consultation process. See 34 CFR §300.134(d).

Equitable services for a parentally placed private school child with a disability must be provided in accordance with a services plan. A services plan must describe the specific special education and related services that will be provided to a parentally placed private school child with disabilities designated to receive services. See 34 CFR §300.138(b). The regulations in 34 CFR §300.137(a) explicitly provide that children with disabilities enrolled by their parents in private schools do not have an individual right to receive some or all of the special education and related services they would receive if enrolled in the public schools.

**Question C-2:** 

Who provides equitable services to parentally placed private school children with disabilities?

Answer:

The regulations in 34 CFR §300.138(c) clarify that equitable services must be provided by employees of a public agency; or through contract by the public agency with an individual, association, agency, organization, or

other entity. An LEA may use Part B funds to make public school personnel available in non-public facilities to the extent necessary to provide equitable services for private school children with disabilities and if those services are not normally provided by the private school. See 34 CFR §300.142(a). An LEA may use Part B funds to pay for the services of an employee of a private school to provide equitable services if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control. See 34 CFR §300.142(b).

#### D. Provision of Services

Authority:

The requirements for provision of services are found in 34 CFR §§300.130, 300.132, 300.137(a), and 300.138.

**Question D-1:** 

What is the process for making decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities?

Answer:

Timely and meaningful consultation must occur before any decisions are made that will affect the participation of parentally placed children in Part B programs. Thus, decisions about services may not be made in advance or in the absence of timely and meaningful consultation. After timely and meaningful consultation has occurred with private schools representatives and representatives of parents of parentally placed private school children with disabilities, the LEA is responsible for making final decisions about all aspects of the services to be provided to parentally placed private school children with disabilities. See 34 CFR §300.137(b).

If the LEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the LEA must provide to the private school officials a written explanation of the reasons why the LEA chose not to accept the recommendations of the private school officials. See 34 CFR §300.134(e).

**Question D-2:** 

Are there any particular kinds of services or specified amounts of services that must be provided to parentally placed private school children with disabilities under Part B of the IDEA?

Answer:

No. Decisions about which services and the amounts of services children with disabilities enrolled by their parents in private schools will receive are made during the consultation process and are based on the needs of the children designated to receive services. These children have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school. See 34 CFR §300.137(a).

**Question D-3:** 

May an LEA provide services to parentally placed private school children that are in addition to the services provided pursuant to the Federal equitable participation requirements and that are covered by the Federal proportionate share?

Answer:

Yes. The IDEA does not prohibit a State or LEA from using additional State or local funds to provide special education or related services to parentally placed private school children with disabilities that are in addition to the services required in 34 CFR §§300.130 through 300.144, consistent with State law or local policy. Additionally, as long as the LEA meets all the other requirements of the IDEA, including providing FAPE to children with disabilities, it is permissible for the LEA to spend more than the minimum amount of Part B funds on providing services to children with disabilities placed by their parents in private schools.

#### **Question D-4:**

Must the proportionate amount of Part B funds be used only for direct services to parentally placed private school children with disabilities? Is it permissible to use funds for this population on other services, such as consultative services, materials, equipment, or training?

Answer:

Under 34 CFR §300.133(a), each LEA must spend a proportionate amount of Part B funds on providing special education and related services (including direct services) to parentally placed private school children with disabilities. The regulations specify that the LEA makes the final decisions about the services to be provided to eligible parentally placed private school children with disabilities, based in part on input provided through the consultation process by appropriate private school representatives and representatives of parents of parentally placed private school children with disabilities. See 34 CFR §300.137(b)(2). These decisions cannot be made in advance of or in the absence of timely and meaningful consultation with private school representatives and with representatives of parents of parentally placed private school children with disabilities.

IDEA does not require an LEA to spend the proportionate share only for direct services. Rather, through the consultation process described in 34 CFR §300.134, a determination must be made about how the available amount of funds will be utilized so that the parentally placed private school children with disabilities designated to receive services can benefit from the services offered. Depending on the discussions during the consultation process, local circumstances, and the amount of funds available to expend on services for this population of children, an LEA could determine, after timely and meaningful consultation, that it will provide its population of parentally placed private school children with disabilities with indirect services. See 34 CFR §300.134(d)(1). These services could include consultative services, equipment, or materials for eligible parentally placed children with disabilities or training for private school teachers and other private school personnel. Under 34 CFR §300.138(c)(2), special education and related services provided to

parentally placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

#### E. Services Plans

Authority:

The requirements for services plans are found in 34 CFR §§300.132(b) and 300.138(b).

**Question E-1:** 

How often must a services plan be updated?

Answer:

The IDEA and its implementing regulations do not specify how often a services plan must be updated. As provided in 34 CFR §300.138(b)(2)(ii), a services plan must, to the extent appropriate, be developed, reviewed, and revised in accordance with the individualized education program (IEP) requirements in 34 CFR §\$300.321 through 300.324. The regulations in 34 CFR §300.324(b)(1) require that a child's IEP be reviewed periodically and not less than annually, to determine whether the annual goals for the child are being achieved, and to be revised as appropriate. As such, the Department suggests that a services plan be reviewed periodically, not less than annually, to determine whether the annual goals for the child are being achieved and to be revised as appropriate.

**Question E-2:** 

Does the parent of a parentally placed private school child have the opportunity to participate in the development of a services plan?

Answer:

Yes. As provided in 34 CFR §300.138(b)(2)(ii), a services plan must, to the extent appropriate, be developed, reviewed, and revised in accordance with the requirements in 34 CFR §\$300.321 through 300.324. Therefore, to the extent appropriate, the meeting to develop a services plan should be conducted in accordance with 34 CFR §300.321. Under 34 CFR §300.321(a)(1), the parents of the child are required participants. Given the emphasis on parent involvement in the IDEA, the Department believes that parents should have the opportunity to participate in meetings to review and develop the services plan for their child.

Question E-3:

What is the difference between an individualized education program (IEP) and a services plan?

Answer:

Children with disabilities enrolled in public schools or who are publicly placed in private schools are entitled to a FAPE and must receive the full range of services under Part B of the IDEA. These services are determined by the child's IEP team and are necessary to meet the child's individual needs and provide FAPE. The IEPs for these children generally will be more comprehensive than services plans developed for parentally

placed private school children with disabilities who are designated to receive services. This is because parentally placed children do not have an individual entitlement to any or all of the services that the children would receive if enrolled in a public school. Further, a services plan should reflect only the services offered to a parentally placed private school child with a disability designated to receive services. In addition, a services plan is required to meet the IEP content requirements described in section 614(d) of the IDEA, or, when appropriate, for children aged three through five, the Individualized Family Service Plan (IFSP) requirements described in section 636(d) of the IDEA, to the extent appropriate, and only in relation to the services that are to be provided.

# **Question E-4:**

What is the process for developing a services plan for a parentally placed private school child with a disability?

#### Answer:

The LEA must initiate and conduct meetings to develop, review, and revise a services plan for a parentally placed private school child with a disability designated to receive services. The LEA must ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. See 34 CFR §300.137(c). The services plan must, to the extent appropriate, be developed, reviewed, and revised consistent with 34 CFR §\$300.321 through 300.324. See 34 CFR §300.138(b)(2)(ii).

# F. Location of Services and Transportation

Authority:

The requirements for location of services and transportation are found in 34 CFR §300.139.

**Question F-1:** 

Section 300.139(a) of the Part B regulations states that services to parentally placed private school children with disabilities may be provided on the premises of private, including religious, schools to the extent consistent with law. How is "to the extent consistent with law" determined?

Answer:

The phrase "to the extent consistent with law" is in section 612(a)(10)(A)(i)(III) of the IDEA. The Department interprets this to mean that the provision of services on the premises of a private school must take place in a manner that would not violate the Establishment Clause of the First Amendment of the U.S. Constitution and would not be inconsistent with applicable State constitutions or laws. The Department generally believes that, unless there is a compelling rationale for these services to be provided off-site, LEAs should provide services on-site, at the child's private school, so as not to unduly disrupt the child's educational experience.

**Question F-2:** 

How does an LEA determine the location where services will be provided to parentally placed private school children with disabilities?

Answer:

The location of services is one of the subjects that must be discussed during the consultation process among LEA officials, private school representatives, and representatives of parents of parentally placed private school children with disabilities. See 34 CFR §300.134(d). Under 34 CFR §300.137(b), after the consultation process and giving due consideration to the views of the private school officials, the LEA makes the final decision. See 34 CFR §300.137(b).

**Question F-3:** 

Must an LEA provide transportation in order for a child to benefit from or participate in the services provided under the private school provisions?

Answer:

The regulations in 34 CFR §300.139(b) require that if necessary for the child to benefit from or participate in the services provided under the private school provisions, an LEA must provide a parentally placed private school child with a disability transportation from the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing

of the services. The IDEA does not require LEAs to provide transportation from the child's home to the private school. The LEA may include the cost of the transportation in calculating whether it has spent the proportionate share of Federal Part B funds on providing services to parentally placed private school children with disabilities as required by 34 CFR §300.133.

## H. Expenditures

Authority:

The expenditure requirements are found in 34 CFR §300.133.

Question H-1:

Is the proportionate share that an LEA must expend to provide equitable services to children with disabilities placed by their parents in private schools different from the share an LEA would have been required to spend prior to the 2004 IDEA reauthorization?

Answer:

Yes. The revisions to the IDEA in 2004 made a significant change in the manner in which the proportionate share is calculated. Under the 2004 amendments to the IDEA, the proportionate share calculation must be based on the total number of children with disabilities who are enrolled in private schools located in the LEA, whether or not the children or their parents reside in the LEA.

More specifically, each LEA must spend the following amounts on providing special education and related services (including direct services) to parentally placed private school children with disabilities:

- (1) For children aged three through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the IDEA as the number of private school children with disabilities aged three through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA is to the total number of children with disabilities in its jurisdiction aged three through 21.
- (2) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the IDEA as the number of parentally placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the LEA is to the total number of children with disabilities in its jurisdiction aged three through five.

Appendix B of the regulations provides an example of how to make this calculation.

Question H-2:

Which children must an LEA count in order to calculate the proportionate share?

Answer:

Children who have been evaluated and found eligible for special education and related services, not just those children who receive services through an IEP or services plan, should be included in the count to calculate the proportionate share. As discussed in 34 CFR §300.133(a), each LEA must determine the total number of private school children with disabilities who are enrolled by their parents in private elementary schools and secondary schools located in the LEA and the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA.

**Question H-3:** 

May an LEA expend more than the proportionate share of Part B funds on children with disabilities placed by their parents in private schools?

Answer:

Yes. As referenced in Question D-3, nothing in the IDEA prohibits an LEA from expending more than the proportionate share. Each LEA is required to spend a minimum amount of its subgrant under Part B of the IDEA for children with disabilities placed by their parents in private schools. As long as the LEA meets all the other requirements of the IDEA, including providing FAPE to children with disabilities, it is permissible for an LEA to spend more than the minimum amount of Part B funds on providing services to children with disabilities placed by their parents in private schools. In addition, as provided in 34 CFR §300.133(d), State and local funds may be used to supplement, but not supplant, the LEA's proportionate share of Federal funds required to be expended on children with disabilities placed by their parents in private schools.

**Question H-4:** 

If an LEA does not expend the entire proportionate share of Part B funds on children with disabilities placed by their parents in a private school that closes, what must the LEA do with those unexpended funds?

Answer:

Under 34 CFR §300.133(a), each LEA is required to spend a minimum amount of its subgrant under Part B of the IDEA on children with disabilities placed by their parents in private elementary and secondary schools. As provided in 34 CFR §300.133(a)(3), if an LEA has not expended all of the proportionate share of its Part B subgrant by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services to children with disabilities placed by their parents in private schools during a carry-over period of one additional year. A reduction in the number of

children, for example, when a school closes after the start of the school year, does not excuse the LEA from spending its proportionate share to provide equitable services to children with disabilities placed by their parents in private schools.

### **Question H-5:**

If an LEA does not expend the entire proportionate share of Part B funds on children with disabilities placed by their parents in private schools by the end of the carry-over period, may the LEA return the unexpended funds to the SEA to be spent by the SEA or reallocated to another LEA?

#### Answer:

No. If, after the carry-over period, the LEA is unable to expend the entire proportionate share and assuming the LEA is in compliance with the child find, consultation, and other requirements related to parentally placed private school children with disabilities in 34 CFR §§300.129 through 300.144, the LEA may use the unexpended funds - at the end of the period during which the funds may be spent on parentally placed private school children - to pay for other allowable Part B expenditures for that same LEA. This situation should be the exception. We emphasize that it is the clear intent of the Act that LEAs spend these funds on providing special education and related services to parentally placed private school children with disabilities, as provided in 34 CFR §§300.129 through 300.144. Therefore, if the LEA is not in compliance with these requirements and has not expended the funds on parentally placed private school children, the LEA must return the funds to the U.S. Department of Education.

The SEA is responsible for ensuring that LEAs are in compliance with these requirements. See 34 CFR §§300.149(a) and 300.600(b)(2). If an LEA has not expended the proportionate share by the end of the carry-over period, the SEA can monitor the LEA to ensure that it is meeting these requirements, including the requirement in 34 CFR §300.135 that the LEA obtain written affirmation signed by representatives of participating private schools that timely and meaningful consultation has occurred. In any event, there is no authority that permits the LEA to return the funds to the SEA to be spent by the SEA or reallocated to another LEA.

#### **Question H-6:**

How can the public find out the amount an LEA must expend to meet its proportionate share of Part B funds?

Answer:

This information should be readily available from the LEA or SEA. As required by 34 CFR §300.134(b), the consultation process must include a determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities, including how the proportionate share of funds is calculated.

**Question H-7:** 

Will the Federal and State allocation of Part B funds have to be adjusted to include parentally placed private school children with disabilities receiving equitable services?

Answer:

Under the Grants to States and Preschool Grants for Children with Disabilities programs, Federal Part B funds are allocated to States, and from States to LEAs, using a statutory formula that takes into consideration the amount of program funds received in a prior year (the base year), along with the most recent population and poverty data (see 34 CFR §§300.703, 300.705, 300.807, and 300.816). Each LEA calculates the proportionate share it must spend on parentally placed private school children with disabilities based on the LEA's subgrant. Because Part B funds are allocated to States and LEAs using a statutory formula that is not based on a child count, the amount of Part B funds allocated to States and LEAs cannot be adjusted based on the number of private school students with disabilities receiving equitable services. Adjustments in State funding could be made depending on each State's laws and funding mechanisms.

**Ouestion H-8:** 

How are the "Maintenance of Effort" requirements affected when equitable services are no longer provided with State and local funds to children with disabilities placed by their parents in private schools? How are the "Maintenance of Effort" requirements affected for an LEA that only used State and local funds in previous years to provide equitable participation to children with disabilities placed by their parents in a private school?

Answer:

In accordance with the regulations in 34 CFR §300.133(d), State and local funds may supplement, but not supplant, the proportionate share of Federal funds required to be expended for children with disabilities placed by their parents in private schools. This is a new requirement under the IDEA and its implementing regulations. Prior to the reauthorization of the IDEA in 2004, if an LEA spent more than the Federal proportionate share of funds using State and local funds, the LEA was not required to spend any Federal Part B funds on parentally placed private school children. This is no longer permissible.

An LEA that previously used only State and local funds to provide equitable services to children with disabilities placed by their parents in a private school and now uses Federal Part B funds to provide equitable services must meet the maintenance of effort requirements in 34 CFR §300.203. The exceptions to the maintenance of effort requirements in 34 CFR §300.204 do not apply to funds used for equitable participation of parentally placed private school children with disabilities. Therefore, the total or per capita amount of local or State and local funds expended for the education of children with disabilities, including the amount of local or State and local funds previously expended for equitable services to children with disabilities placed by their parents in private schools, would have to be maintained, unless adjustments are permitted under 34 CFR §300.205.

### Question H-9:

May an LEA include administrative costs to meet the requirement to spend a proportionate share of Part B funds on children with disabilities placed by their parents in private schools?

#### Answer:

No. As stated in 34 CFR §300.133(a), each LEA is required to spend a proportionate share of Federal Part B funds on providing special education and related services to children with disabilities who are enrolled by their parents in private elementary schools and secondary schools in order for the LEA to meet its responsibility for providing equitable services. We interpret the reference to "special education and related services" to mean that administrative costs could not be included in the amount each LEA must spend to meet this requirement. Thus, an LEA may not expend the proportionate share of Federal Part B funds on administrative costs.

Question H-10: May an LEA use Part B funds that are required to be expended on equitable services to make payments directly to a private school?

Answer:

No. Part B funds for equitable services may not be paid directly to a private school. Under 34 CFR §300.144(a), a public agency must control and administer the funds used to provide special education and related services to parentally placed private school children with disabilities. Under 34 CFR §300.141, an LEA may not use Part B funds to finance the existing level of instruction in a private school, and such funds may not be used for meeting the needs of a private school or the general needs of the students enrolled in the private school. The LEA must use the proportionate share of Federal Part B funds to meet the special education and related services needs of parentally placed private school children with disabilities.

**Question H-11:** Who is required to monitor an LEA's expenditures of Part B funds to meet the requirements for equitable services?

Answer: As required by 34 CFR §§300.149(a) and 300.600(b)(2), the SEA is responsible for ensuring that LEAs meet all program requirements under Part B of the IDEA. This includes the requirement that an LEA expend the proportionate share of Part B funds on providing special education and

disabilities in accordance with 34 CFR §§300.129 through 300.144.

related services to parentally placed private school children with

Question H-12: Must children whose parents decline special education and related services be included in a school district's proportionate share calculation?

Answer:

Yes. As specified in 34 CFR §300.131(a), each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA. The number of parentally placed private school children with disabilities is used to determine the amount that the LEA must spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year. Under 34 CFR §300.300(d)(4), if a parent of a home-schooled or parentally placed private school child declines to consent to the initial evaluation or the reevaluation, the public agency may not use the consent override procedures to seek to conduct the evaluation and, thus, may not include the child in the annual count of the number of parentally placed private school children with disabilities.

If the LEA evaluates a parentally placed private school child and determines the child eligible under the IDEA, but the parent declines the offer of special education and related services, the LEA must include this child in the annual count of the number of parentally placed private school children with disabilities. Thus, an LEA must include in its proportionate share calculation eligible children with disabilities, including those children whose parents decline all publicly funded services and place them in a private school at their own expense, provided those children are enrolled by their parents in a private, including a religious, elementary school or secondary school located in the school district served by the LEA.

### I. Property, Equipment, and Supplies

**Authority:** 

The requirements for property, equipment, and supplies are found in 34

CFR §300.144.

**Question I-1:** 

May a public agency place equipment and supplies for equitable services

in a private school?

Answer:

Yes. The public agency may place equipment and supplies in a private school, but only for the period of time needed to meet the equitable participation requirements for the Part B program. The public agency must ensure that equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility. The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes or if removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. See 34 CFR §300.144(b), (c), and (d).

**Question I-2:** 

May Part B funds for equitable services be used for repairs, minor

remodeling, or construction of private school facilities?

Answer:

No. Part B funds for equitable services may not be used for repairs, minor remodeling, or construction of private school facilities. See 34 CFR

§300.144(e).

### J. Out-of-State Children With Disabilities

**Authority:** 

The requirements for out-of-State children are found in 34 CFR §300.131(f).

**Question J-1:** 

Must the LEA where the private elementary and secondary schools are located conduct child find activities for parentally placed private school children who reside outside the State?

Answer:

The child find provision in 34 CFR §300.131(f) makes clear that the LEA where the private elementary and secondary schools are located is responsible for conducting child find, including individual evaluations, of all parentally placed private school children suspected of having a disability enrolled in private elementary and secondary schools located in the LEA, regardless of where those children reside. This includes all children from other States who may be attending private elementary schools and secondary schools located in the LEA.

**Question J-2:** 

Who is responsible for determining and paying for services provided to out-of-State parentally placed private school children with disabilities?

Answer:

The LEA where the private school is located, in consultation with private school officials and representatives of parents of parentally placed private school children with disabilities, is responsible for determining and paying for the services to be provided to out-of-State parentally placed private school children with disabilities attending private elementary and secondary schools located in that LEA. Under 34 CFR §300.131(f), these out-of-State children must be included in the group of parentally placed children with disabilities whose needs are considered in determining which parentally placed private school children with disabilities will be served and the types and amounts of services to be provided.

**Question J-3:** 

May an LEA require another LEA to pay for the services of a parentally placed private school child with a disability from another State?

Answer:

No. Section 300.133(a) of the regulations clarifies that the LEA where a private school is located is responsible for spending a proportionate amount of its subgrant under Part B of the IDEA on special education and related services for children enrolled by their parents in private elementary and secondary schools located in the LEA. There is no exception for out-of-State children with disabilities attending a private school located in the LEA. Therefore, out-of-State children with disabilities must be included in the group of parentally placed children with disabilities whose needs are

considered in determining which parentally placed private school children with disabilities will be served and the types and amounts of services to be provided. Another LEA may not be charged for child find and equitable services even if the child with a disability resides in another State.

Nothing in the IDEA precludes an LEA from contracting with a third party to fulfill its obligations to ensure equitable participation. This includes contracting with a student's LEA of residence as a third party provider.

### **Ouestion J-4:**

When making a determination regarding the services that an LEA will provide to children with disabilities placed by their parents in private schools, could an LEA decide to only provide services to students from their LEA or their State?

#### Answer:

No. Although LEAs have discretion to determine how the proportionate share of Federal Part B funds will be expended so long as the consultation requirements in 34 CFR §300.134 are followed for all parentally placed private school children, LEAs cannot determine, prior to or in absence of the timely and meaningful consultation process, that the proportionate share of Federal Part B funds for equitable services can only be expended to meet the needs of children who are residents of that LEA or State.

### K. Home-Schooled Children with Disabilities

**Authority:** 

The requirements for children with disabilities enrolled by their parents in private schools are found in 34 CFR §§300.130 through 300.144.

**Ouestion K-1:** 

Which LEA is responsible for conducting child find for children who are homeschooled?

Answer:

Generally, the LEA where the child resides is responsible for conducting child find activities, including initial evaluations and reevaluations, for children who are homeschooled.

Question K-2:

Are home-schooled children considered parentally placed private school children?

Answer:

Whether home-schooled children with disabilities are considered parentally placed private school children with disabilities is determined under State law. If the State recognizes home-schools as private elementary schools and secondary schools, children with disabilities in those home-schools must be treated in the same way as other parentally placed private school children with disabilities.

**Question K-3:** 

If a home-schooled child enrolled in the public school for the purpose of taking some academic courses was identified as having a disability, would the student be treated as a parentally placed private school child or as a public school child?

Answer:

Whether a home-schooled child with disabilities enrolled in the public school for the purpose of taking some academic courses would be treated as a parentally placed private school child entitled to be considered for equitable services or as a public school child entitled to receive FAPE is determined under State law. Even if such a child were not considered a public school student, the public school would have to meet the requirements of section 504 of the Rehabilitation Act of 1973, as amended, and title II of the Americans with Disabilities Act, as amended, by providing the child an equal opportunity to participate in or benefit from the academic courses provided at the public school. In addition, the responsible public agency, generally the LEA of residence, would have to make FAPE available to the child consistent with Part B requirements if the parent seeks to enroll the child with a disability in the public school full-time.

### L. Due Process

**Authority:** 

The requirements for how due process and State complaints apply to children parentally placed in private schools are found in 34 CFR §300.140.

**Question L-1:** 

Under what circumstances may a parent file a due process complaint under the private school provisions?

Answer:

As provided in 34 CFR §300.140(b), a parent of a child enrolled by that parent in a private school has the right to file a due process complaint regarding the child find requirements in 34 CFR §300.131, including the requirements in 34 CFR §\$300.300 through 300.311. Such a complaint must be filed with the LEA in which the private school is located, and a copy must be forwarded to the SEA by the LEA. The due process provisions in section 615 of the Act and 34 CFR §\$300.504 through 300.519 of the regulations do not apply to issues regarding the provision of services to any particular parentally placed private school child with disabilities whom an LEA has agreed to serve because there is no individual right to services for such children under the IDEA.

Disputes that arise about equitable services are, however, properly subject to the State complaint procedures in 34 CFR §§300.151 through 300.153. As provided in 34 CFR §300.140(c), a parent may file a signed written complaint in accordance with the State complaint procedures alleging that an SEA or LEA has failed to meet the private school requirements, such as failure to properly conduct the consultation process.

### M. State Complaints

**Authority:** 

The requirements for State complaints are found in 34 CFR §§300.136 and 300.140.

**Question M-1:** 

Do private school officials have the right to file a complaint under the State complaint provisions in 34 CFR §§300.136 and 300.140?

Answer:

Yes. Under 34 CFR §300.136, a private school official has the right to complain to the SEA that the LEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. Under this provision a complaint must provide the basis of the private school official's belief that the LEA did not comply with the consultation requirements. The LEA must forward appropriate documentation related to the complaint to the SEA. If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary providing the basis of the official's belief that the LEA did not comply with the consultation requirements, and the SEA must forward the appropriate documentation related to the complaint to the Secretary.

Question M-2:

If the parent of a parentally placed private school child with a disability files a State complaint alleging that the services identified in the child's services plan were not provided, is it permissible for the SEA to resolve the complaint by requiring the LEA to provide compensatory services? How would the provision of these services affect the calculation of the expenditures to meet the required proportionate share?

Answer:

Under 34 CFR §300.140(c), any complaint alleging that an SEA or LEA has failed to meet the requirements in 34 CFR §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the State complaint procedures described in 34 CFR §§300.151 through 300.153. If in resolving such a complaint, the SEA determines that compensatory services are the appropriate remedy, such services may be ordered by the SEA if sufficient funds are available from the proportionate share set aside in the LEA to provide equitable services under 34 CFR §§300.129 through 300.144.

If the proportionate share has been expended prior to the awarding of compensatory services to resolve a complaint, the SEA cannot require an LEA to spend additional Part B funds, beyond the minimum amount required under 34 CFR §300.133(a), to pay for compensatory services for a parentally placed private school child with a disability. However, under

34 CFR §300.133(d), State and local funds may supplement, but not supplant, the proportionate amount of Federal Part B funds required to be expended for parentally placed private school children with disabilities. The use of State and local funds, on top of the proportionate share of Part B funds, is permitted but not mandatory. Therefore, if the proportionate share of Part B funds has been expended, pursuant to the authority in 34 CFR §300.133(d), a State may, but is not required to, order an LEA to use State and local funds to pay for compensatory services for a parentally placed private school child with disabilities. It is important that as part of the consultation process, the LEA, private school officials, and representatives of parents of parentally placed private school children with disabilities consider the amount of the proportionate share of Part B funds in determining what services will be provided in order to ensure an LEA has sufficient Part B funds to implement the services plan for each parentally placed child with a disability who has been designated to receive services.

### N. Preschool Children

**Authority:** 

The requirements for children with disabilities enrolled by their parents in private schools are found in 34 CFR §§300.130 through 300.144.

Question N -1:

What obligation, if any, do districts have to serve three-through five-year-old children who are parentally placed in private preschools?

Answer:

An LEA's obligation to serve children aged three through five under the equitable services provisions depends on whether a child is enrolled in a private school or facility that meets the definition of "elementary school" in the IDEA and the final regulations. "Elementary school" is defined in 34 CFR §300.13 as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. Accordingly, three-through five-year-old children with disabilities who are enrolled by their parents in a private school or facility that meets the State's definition of "elementary school" would be considered parentally placed and the equitable participation provisions would apply.

A child aged three through five enrolled by his or her parents in a private school or facility that does not meet the State's definition of "elementary school" would not be eligible to be considered for equitable services. However, the State's obligation to make FAPE available to such a child remains. Section 612(a)(1) of the IDEA requires that States make FAPE available to eligible children with disabilities aged three through 21 in the State's mandated age range (34 CFR §300.101). Because many LEAs do not offer public preschool programs, particularly for three- and four-year-olds, LEAs often make FAPE available to eligible preschool children with disabilities in private schools or facilities in accordance with 34 CFR §\$300.145 through 300.147. In these circumstances, there is no requirement that the private school or facility be an "elementary school" under State law.

In some instances, an LEA may make FAPE available in the private preschool program that the parent has selected. If there is a public preschool program available, the LEA of residence may choose to make FAPE available to a preschool child in that program. If the group of persons making the placement decision, as specified in 34 CFR §300.116(a)(1), places the child in a public or private preschool program and the parents decline the public agency's offer of FAPE because they want their child to remain in the private preschool program they have selected, the public agency is not required to provide FAPE to that child., The parent may challenge the public agency's determination of what

constitutes FAPE for their child using the State complaint and due process procedures available under IDEA.

### O. Children in For-Profit Private Schools

Authority:

The requirements for children with disabilities enrolled by their parents in private schools are found in 34 CFR §§ 300.130 through 300.144.

**Question O-1:** 

Are children enrolled in a for-profit private school counted for the purpose of determining the proportionate share and eligible to receive equitable services?

No. The regulations in 34 CFR §300.130 define parentally placed private school children with disabilities as children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 CFR §300.13 or secondary school in 34 CFR §300.36. The definitions of elementary school in 34 CFR §300.36 specify that the school must be nonprofit. Therefore, children attending for-profit private schools would not be included in the proportionate share calculation or be eligible for equitable services.

However, under 34 CFR §300.111, the State must ensure that all children with disabilities, including children with disabilities attending private schools, who are in need of special education and related services, are identified, located, and evaluated. This includes children with disabilities attending for-profit schools. A State determines which public agency is responsible for conducting child find under 34 CFR §300.111 for children suspected of having a disability attending for-profit private schools. Generally, this agency is the LEA in which the child resides.

## SmartStart: Private Schools -- Obligation to Evaluate Parentally Placed Students

Overview | Key Points | Links

### Overview

Parental placement of a student with disabilities in a private school does not relieve the school district of its obligation to evaluate the student.

### **Key Points**

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source.

### Scope of Child Find

School districts must identify and evaluate all children with disabilities residing within their jurisdiction, as the requirements of child find apply regardless of whether the children are in public school, private school or in the custody of public agencies or institutions. 34 CFR 300.125 and 34 CFR 300.220. In addition, the child find obligations extends to include students who attend parochial schools. 34 CFR 300.451(a). See also SmartStart: Referral for Evaluation and Child Find Under IDEA.

### Relationship of Child Find Activities to Entitlements for Private School Children

Besides being a statutory requirement, the conduct of child find activities for private school children
is significant because the number of private school children determines the amount that the district
must spend on services for this population. 34 CFR 300.453.

### Comparison of Child Find for Private and Public School Populations

Child find activities for private school children undertaken by school districts must be comparable to
activities undertaken for children with disabilities in public schools. 34 CFR 300.451(a). Although
neither the regulations nor the discussion accompanying their publication offer an explicit definition of
what "comparable" means in this context, it is clear that child find for both groups should be a yearround activity.

Links SmartStart: Child Find Under Section 504

### Introduction

The law and practices regarding the provision of special education and related services to students with disabilities placed by their parents in private schools have developed over the past several years as a result of court cases and administrative policy interpretive guidance. Until the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA), neither the federal statute, nor the applicable federal regulations (34 C.F.R. Part 300) addressed this issue in detail.

This article is intended to provide an overview of the IDEA, its regulations, and relevant case law regarding parentally-placed students with disabilities in private schools. The article will address what the rights and responsibilities under the IDEA are in identifying and providing special education services to parentally-placed private school students with disabilities. This topic should be distinguished from other situations where a student with a disability is receiving services from a private school. If the public agency places a student with disability in a private school as a means of fulfilling the school's obligations to provide a free appropriate public education (FAPE), the student maintains an individual legal entitlement to services and the parents have full access to all the procedural safeguards provided by the IDEA. In addition, when the parents have made a "unilateral placement" of the student in a private school when the provision of a free appropriate public education is an issue, the parents may seek full reimbursement for all costs associated with that placement from a hearing officer or a court.

The reader of this article should also be aware that many states have state laws that provide for greater rights and legal entitlements than the IDEA. For example, some states such as Texas and Idaho have dual enrollment state statutes allowing students, including students with disabilities, who attend private schools to also enroll in the public schools and receive desired services, which may include special education. Therefore, state law and local school district policy should also be reviewed.

### **Early Judicial Decisions**

One of the first court cases to address the issue of what, if any, legal obligation a school district had under the IDEA to provide special education services to a parentally-placed private school student with a disability was handed down by the United States Court of Appeals for the Fourth Goodall v. Stafford Circuit. The case, County School Board, 17 Individuals with Disabilities Law Report (IDELR) 745 (1991). involved a student with a profound hearing impairment who was placed by his parents in a parochial school. The school district offered to provide special education and related services pursuant to an IEP in the local public school. The parents initiated legal action when the school district refused to provide a cued speech interpreter at the private school. The Court upheld the school district's position stating that it met its obligations under the Education for All Handicapped Children's Act (now the IDEA) by offering the student special education and related services at the public school site.

The United States Supreme Court, in 1993, addressed the issue of whether the provision of a sign language interpreter by a public school district on site in a parochial school would violate the Establishment Clause of the First Amendment to the Con-

stitution which provides for the separation of church and state. In Zobrest v. Catalina School District, 19 IDELR 921 (1993), the Supreme Court held that a school district is not prohibited by the United States Constitution from providing a sign language interpreter to a student with a disability who is attending a parochial school. The Supreme decision Court's never addressed, however, whether the school district was obligated, under the IDEA, to provide such services. The decision clarified that the Constitution did not stand in the way of a district's choice to provide such service. In so doing, the Court noted that there is a distinction between the tasks of a sign language interpreter who acts as a transmitter of what is said and that of a teacher or guidance counselor.

### Early United States Department of Education Guidance

Initially, the guidance on this topic was in the form of interpretive policy letters issued by the Office of Special Education Programs (OSEP) of the United States Department of Education applying the Educational Department General Administrative Regulations (EDGAR) to

# Significant Judicial Decisions Preceding the 1997 Amendments to the IDEA

Prior to 1997, the courts were in disagreement as to what, if any, special education services were due students with disabilities when they were placed in private schools by their parents. The two leading judicial decisions on the issue were from the Seventh and Second Circuits.

The United States Court of Appeals, Seventh Circuit, in <u>K.R. v. Anderson</u> Community School Corporation, 23 IDELR 1137 (1996), in overturning the lower court's decision, held that the IDEA does

• not entitle students with disabilities placed in private schools by their parents to a comparable range of special education services they would receive if enrolled in a public school. In this case, the parents were requesting the services of an instructional assistant on the premises of the parochial school where they enrolled their child. According to the Court, the IDEA gives the school district discretion to decide what services will be offered in order to provide private school students with a "genuine opportunity for equitable participation" in programs under Part B of the IDEA. On the other hand, the United States Court of Appeals, Second Circuit, in Russman v. Board of Education of the Enlarged City School District of the City of Watervliet, 24 IDELR 274 (1996), ordered a school district to provide a student with disabilities parentally-placed in a private school with the services of a consulting teacher and teaching aide on site in the parochial school. In doing so, the Court determined that the IDEA rights of private school students with disabilities were "more consistent with mandatory entitlement than with discretionary authority" suggested by OSEP and other judicial decisions.

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Both cases were appealed to the United States Supreme Court while the Congress was in the process of reauthorizing the IDEA. The reauthorization process was completed by the Congress and the President signed IDEA '97 on June 4,1997. The Supreme Court, in June 1997, vacated the decisions and remanded the cases back to the Courts of Appeals "for further consideration in light of the Individuals with Disabilities Education Act Amendments of 1997."

## The 1997 Amendments to the IDEA (IDEA '97)

IDEA Amendments Act of 1997 detailed the fiscal scope and services for parentally-placed private school students with disabilities. The statutory provision states:

To the extent consistent with the number and location of children with disabilities in the state who are enrolled by their parent in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children's special education and related services in accordance with the following requirements.

- Amounts expended for the provision of those services by a local educational agency (LEA) shall be equal to a proportionate amount of federal funds made available under this part.
- Such services may be provided to children with disabilities on the premises of private, including parochial schools, to the extent consistent with law.

 The requirements ... relating to child find shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools. 20 U.S.C. Section 1412 (a)(10).

### Reconsideration of the K.R. and Russman Decisions

The Seventh and Second Circuits reconsidered their previous decisions in light of the IDEA '97 and reached consensus on the obligation to provide special education services to parentally-placed private school children with disabilities.

The Seventh Circuit upheld its previous ruling finding that the IDEA '97 requires school districts to offer FAPE to all students with disabilities. However, if FAPE is offered at a public school and the parents voluntarily choose to enroll their child in a private school, the school district is not obligated to offer "comparable" services at the private school. The Court also rejected the parent's assertion that the district, by refusing to provide the services at the parochial school, infringed upon the student's exercise of religion.

K.R. v. Anderson Community School Corporation, 26 IDELR 864 (1997).

The Second Circuit reversed its original opinion and concluded that the school district was not obligated under the IDEA to provide special education and related services to voluntarily enrolled private school students. According to the Court, the IDEA '97 only requires that a district provide private school student with disabilities special education services using a proportionate amount of federal Part B funds. Although school districts are permitted under the IDEA to furnish on site services, the language of the statute is permissive. Russman v. Mins, 28 IDELR 612 (1998). See also Cefalu v. East Baton Rouge Parish School Board, 26 IDELR 166 (United States Court of Appeals, Fifth Circuit (1997)).

# The IDEA Regulations (34 C.F.R. Part 300)

Although the basic issues were addressed through the statute and judicial decisions, many implementation issues remained unresolved until the United States Department of Education promulgated the final IDEA regulations in March 1999.

Reference in the following summary is made to both specific IDEA regulatory sections (Part 300 of Title 34 of the Code of Federal Regulations) and to the Analysis and Comments to the IDEA Regulations contained in the Federal Register of March 12, 1999. The Analysis and Comments summarize the United States Department of Education's intent in promulgating the regulations.

It should also be emphasized that the IDEA sets a minimum legal standard of practice. The IDEA regulations make clear that nothing in the IDEA prevents a LEA from providing more services than are legally required. Again, it is important to also be aware of any applicable state law or local district policy that may require the LEA to provide more services than are required under the IDEA.

### **Recent OSEP Policy Guidance**

The Office of Special Education Programs has issued a technical assistance

document (OSEP Memorandum 00-14, May 4. 2000) in a question and answer format to assist families of students with disabilities, state and local education officials and private school representatives to better understand the IDEA requirements. Excerpts from this Memorandum are included in the following discussion.

### **Summary of Current IDEA Requirements**

### Child Find

The regulations underscore that local educational agencies maintain the responsibility to engage in child find activities in locating, identifying, evaluating children, who are legal residents of the LEA as provided for under state law, who may have a disability and be in need of special education services regardless of whether they are enrolled in a public school. 34 C.F.R. §§300.125 (a) (1) (i) and 300.451. In doing so, the LEA must consult with appropriate representatives of private school students with disabilities on how to carry out child find activities for private school students.

The child find activities that the LEA engages in for private school children must be comparable to the activities that it uses to evaluate students in the public school. Therefore, parents are entitled to the procedural safeguards that apply including the right to participate in evaluation and eligibility meetings, be provided with a copy of the Evaluation Report and eligibility determination, be provided with prior written notice of proposed or refused actions, and be asked to provide informed

written consent for the initial evaluation. In addition, parents have the right to request a due process hearing to challenge decisions pertaining to the identification and evaluation of their child.

The determination that a private school student has a disability and is in need of special education services, however, does not result in an entitlement to IEP services unless the student then enrolls in the public schools. Under the IDEA statute and regulations, a student with a disability who is placed by his/her parents in a private school has no individual legal entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school. Parents must be informed by the LEA that, should they enroll their child in the public school; the school will provide a free appropriate public education. 34 C.F.R. §§300.300, 300.454.

Under recent OSEP policy guidelines, if a determination is made that a student in a private school is eligible for special education services, the general rule is that the LEA must convene an IEP Team to develop an IEP for the student. This provides

the parents with specific information regarding what a free appropriate public education would be for their child so that they can decide whether to maintain the private school placement or to enroll their child in the public school to receive IEP services. The exception to this requirement would occur if the parents clearly indicate their intent to enroll or to maintain their child in the private school and are not interested in considering a public program or placement. In such a case an IEP would not need to be developed. (See Question 8, OSEP Memorandum 00-19).

### **Service Determination**

The LEA is required to consult with appropriate representatives of private school students with disabilities, in a timely and meaningful way, regarding the number of private school students with disabilities, their needs and location in order to decide: which students will receive services, what services will be provided, how and where the services will be provided and how the services will be evaluated. 34 C.F.R. §300.454(b). The law leaves discretion for the LEA to determine who would be appropriate representatives of such students. Appropriate representatives may include parents, teachers, as well as building or central office administrators. (See Question 25, OSEP Memorandum 00-19).

The Analysis and Comments to the regulations clarify that the LEAs and States determine the appropriate period between consultations based on circumstances in each jurisdiction. An annual consultation is not automatically required.

Based on the information received, the LEA determines what services and which students will receive special education and related services using a proportionate amount of their IDEA Part B grant.

The proportion is based on the number of private school children with disabilities (ages 3 through 21) residing in the LEA compared to the total number of children with disabilities (ages 3 through 21) residing in the LEA. The number of private school children with disabilities used to calculate the proportionate share is based on the total number of private school children identified through child find as being eligible for special education services, not just the number of such students who are receiving special education or related services in accordance with a services plan. (See Question 15. OSEP Memorandum 00-14).

For example, if the LEA has 1,000 children with disabilities and of those children, 50 have been placed by their parents in private schools, the LEA would be required

to spend on providing special education and related services, an amount that at least equals 5% or (50/1,000) of its Part B sub-grant. The LEA needs to determine such proportionate share of both:

- the LEAS General Part B subgrant for students with disabilities ages 3 through 21, and
- the LEA's Preschool (Section 619)
   subgrant for
   students with disabilities ages 3 through
   5.

In determining whether the LEA has met this minimum expenditure requirement, the LEA can use local, state and/or federal funds to provide the services, 34 C.F.R. §300.453. Note that any costs incurred as a result of child find activities are not included in the above analysis.

Based on the information received from the consultation with appropriate representatives of private school students with disabilities previously discussed, the LEA will decide the type and location of services that will be provided to students with disabilities in private schools.

In so doing, the LEA may consider providing direct services, consultative services or both. The location of the

### Parentally-Placed Students with Disabilities

The services may be provided on site, at the public school or a neutral location. 34 C.F.R. §300.456. This may include services on site at a parochial school, to the extent consistent with law, as will be addressed later in this paper.

Should transportation be required for the private school student with disabilities to benefit from or participate in the services provided under their services plan. such transportation must be provided. Such transportation may include transportation from the private school or home to the service site or from the service site to the private school or home (depending on the timing of the service). LEAs are not required to provide transportation from the home to the child's private school. Any transportation costs incurred may be included in calculating the pro-rated amount required to be spent on services. 34 C.F.R. §300.456.

### Reevaluations

The reevaluation requirements applicable to public school students with disabilities also apply to private school students with disabilities. Reevaluations must be conducted at least every three years or more often if conditions warrant or the parent or teacher requests. A reevaluation should be conducted of every child with a disability, even if that child was not a child

who received service through a Services Plan. The scope of the reevaluation is a decision for the IEP team and informed written parental consent must be sought if the reevaluation will involve more than a review of existing information. If a child has not received service through a Services Plan, it is likely that a review of existing information would not be sufficient for reevaluation purposes. 34 C.F.R. §5300.505, 300.533, and 300.536.

### **Due Process Rights**

Parents have the right to file for a due process hearing only on the issue of child find activities. Parents

do not have the right to contest a due process hearing's *decisions* regarding the services *their* child will or will not receive. in such a case, parents may file an administrative complaint with the state education agency. 34 C.F.R. §300.457.

### **Home-Schooled Students**

The analysis and comments to the regulations clarify that the IDEA's provision addressing private school students would also apply to students with disabilities who are being home-schooled if state law so provides. If a state considers home schools to be private schools, the above analysis applies. If not, the school district would still have child find responsibilities under the IDEA and if found eligible, would have a responsibility to offer to provide a FAPE should the parents decide to enroll their child in the public school.

### **Preschoolers**

The statutory and regulatory requirements discussed in this paper are fully applicable to children with disabilities aged 3 through 5 placed by their parents at private schools. State law will control whether day care centers and preschools are considered private schools for purposes of this analysis. The same procedures regarding child find, eligibility determinations and service determinations which apply to school-aged students apply to preschoolers. (See Question 38, OSEP Memorandum 00-14).

#### Services On-Site of a Parochial School

As the 1997 Amendments state, a school district may provide the services it offers students with disabilities who are placed in private schools with services on site of the private school "to the extent consistent with law".

The United States Supreme Court, expanding its holding from the Zobrest decision. held that supplementary instructional services under Title I of the Elementary and Secondary Act may be provided in a religiously affiliated private school without violating the Establishment Clause of the Constitution. Agostini v. Felton (1997). In guidance issued by the United States Department of Education, the Department stated," ... the implication of the Court's ruling is that there is not a constitutional bar to public employees providing educational services in private schools under other Federal programs under similar circumstances." Question 25 from Guidance on the Supreme Court's Decision in Agostini v. Felton (United States Department of Education, July 18, 1997).

The Agostini holding was specifically applied to the provision of special education and related services by the United States Court of Appeals, Sixth Circuit, which held that furnishing occupational therapy and physical therapy on the premises of a parochial school did not violate the Establishment Clause of the Constitution. Peck v. Lansing School District, 28 IDELR 472 (1998).

As was noted earlier in the document, some states have laws which may impose limitations on the discretion provided under federal law or exceed the .minimum legal

standard set by the IDEA. A recent decision from the United States Court of Appeals. Ninth Circuit is illustrative.

The Court in KDM by W 1M v. Reedsport School District, 31 IDELR 107 (1999) held that an Oregon regulation mandating that special education and related services must be provided in a religiously neutral setting did not violate the First Amendment. Neither the IDEA nor the Constitution requires that the services be provided on the site of the parochial school. As the Supreme Court noted in Agostini, a school is permitted but not required to provide the services on-site unless there are further restrictions imposed by state law.

### Parentally-Placed Students with Disabilities

### Conclusion

In summary, public school officials need to ensure that the LEA has policies and procedures, which provide for:

- ongoing child find and evaluation services for students who are suspected of having a disability and in need of special education who are being home schooled or placed by their parents in a private school.
- timely and meaningful consultation with appropriate representatives of private school students in order to obtain information for considering:
  - which students will receive services; what services will be provided;
  - how and where the services will be provided; and
  - how the services will be evaluated.
- determining the proportionate share of federal special education funds to be used for services
- developing, implementing and reviewing services plans for students with disabilities in private schools who will be receiving special education or related services from the district
- affording selected due process procedures to parents.

As noted in the introduction, many state

laws provide for greater rights and legal entitlements than the IDEA and, therefore, readers should review their state law.

As this paper illustrates, the law addressing the provision of special education and related services to students with disabilities placed in private schools by their parents has been evolving over the years due to statutory and regulatory changes and judicial decisions. Further clarification of the law is anticipated.

### Author:

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### **APPENDICES**

Appendix I OSEP Memorandum 00-14 Questions and Answers on Obligations of Public Agencies in Serving Children with Disabilities Placed by Their Parents at Private Schools provided by OSEP

Important Note: This Q & A came as an attachment to a memorandum from OSEP. Please read the Memorandum (attached to the bottom of this Q & A) as guidance to understanding the context of these Questions & Answers.

**Question Quick Pick** 

- I. Child Find
- 1. What is child find for parentally-placed private school children with disabilities?
- 2.Can amounts expended for child find, including individual evaluations, be deducted from the required amount of funds to be expended on services for parentally-placed private school children with disabilities?
- 3. Must child find for private, including religious-school children be comparable to child find for public school children?
- 4. How can LEAs meet their child find obligations for parentally-placed private school children residing in their jurisdiction, including religious schools?
- 5.May LEAs restrict their child find activities to children with certain disabilities, and exclude from child find some children, if the LEA determines, through consultation, that it will offer its population of parentally-placed private school children with disabilities only certain specified services?
- 6.Once parentally-placed private school children suspected of having disabilities under Part B are identified, are the requirements applicable to evaluations of such children the same as requirements applicable to other children suspected of having disabilities?
- 7. Following the evaluation, are the requirements the same for parentally-placed private school children as for other children who have been evaluated under Part B?
- 8. Following the initial determination that a parentally-placed private school child is an eligible child with a disability under Part B, must the public agency develop an IEP for the child?
- 9. Are public agencies required to conduct periodic reevaluations of parentally-placed private school children with disabilities, and if so, of which parentally-placed private school children?
- 10.Can expenditures for reevaluations be considered in determining whether a public agency has met the expenditure requirements for services for parentally-placed private school children with disabilities?
- 11. Which LEA is responsible for child find and in meeting requirements for reevaluation if the private school the child attends is located outside of the LEA of the child's parents' residence?

- 12.Do parents who disagree with a public agency's child find determination with respect to their parentallyplaced private school child have any recourse?
- 13.If parents reside in LEA A and enroll their child with a disability at a private school located in LEA B, which LEA is responsible for locating and evaluating that child, including that child in its annual count of eligible parentally-placed private school children with disabilities that is conducted for determining the expenditure requirement, and for determining whether the child should receive services under Part B?
- 14. How is the proportionate share for expenditures for services for parentally-placed private school children with disabilities calculated?
- II. Annual Expenditures for Parentally-placed Private School Children with Disabilities
- 15.Is the proportionate share based on the number of children with disabilities receiving special education or related services in accordance with a services plan, or on the total number of eligible private school children with disabilities residing in the Lea's jurisdiction?
- 16. When must LEAs conduct the annual count of eligible parentally-placed private school children with disabilities residing in their jurisdiction (the Count required at §300.453)?
- 17.In meeting the requirement to expend a proportionate share of available Federal funds on, services for parentally-placed private school children with disabilities residing in their jurisdiction, may LEAs use funds other than Federal funds?
- 18.May State or local funds be used to provide services to parentally-placed private school children with disabilities in excess of the services provided for this population of children with the proportionate share of available funds?
- 19. How are Part B funds distributed now that the permanent funding formula is in effect?
- 20. Under the permanent formula, will it still be necessary to conduct an annual count of parentally-placed private school children with disabilities?
- 21.In the permanent formula, 85 percent of funds above the base payment are distributed on the basis of the "relative numbers of children enrolled in public and private elementary and secondary schools within each agency's jurisdiction." What does this mean since some parentally-placed private school children live in the jurisdiction of the LEA but are enrolled in a private school outside of the LEA's jurisdiction?
- 22. Are there any particular kinds of services, and specified amounts of services, to be provided to parentally-placed private school children with disabilities under Part B?
- III. Provision of Services
- 23. How are decisions made about the services that are to be provided to parentally-placed private school children with disabilities, including the type and location of such services, in light of the limited amount of funds that must be expended annually on services for this population of children?

- 24. When must consultation about services occur?
- 25. Which individuals are appropriate representatives of parentally-placed private school children with disabilities? What about parents of such children?
- 26.Is it possible for an LEA, through consultation with appropriate representatives of parentally-placed private school children with disabilities, to provide only certain direct services to those parentally-placed private school children with disabilities designated to receive services?
- 27.Is it possible for an LEA, through consultation with appropriate representatives of parentally-placed private school children with disabilities, to determine that it will provide no direct services to its eligible parentally-placed private school children with disabilities, but that instead, the LEA will provide consultative services, or equipment and teacher training?
- 28. How would a services plan be developed for a parentally-placed private school child with a disability receiving consultative services?
- 29. Could an LEA, through consultation with appropriate representatives of parentally-placed private school children with disabilities, decide to provide services that address some of the needs of parentally-placed private school children with disabilities?
- 30.Is there any requirement for parentally-placed private school children with disabilities to have IEPs?
- 31. Must services plans be in place for all eligible parentally-placed private school children with disabilities residing in the LEA's jurisdiction?
- 32. How must a services plan be developed?
- 33. What must a services plan contain?
- 34. Are there any remedies available to parents who dispute the services offered or provided to their child in connection with the parental private school placement?
- IV. Location of Services
- 35. How are decisions made about the location of services that the LEA has selected through consultation to offer to its parentally-placed private school children with disabilities?
- 36.If transportation would be a related service for a child with a disability, had the child been served directly in a public agency program or a public agency placement at a private school, would transportation automatically become a related service for a parentally-placed private school child with a disability who is designated to receive services from the LEA?
- 37. Could an LEA refuse to provide transportation to parentally-placed private school children with disabilities who reside in its jurisdiction but who attend private schools located outside of the LEA's boundaries?
- V. Miscellaneous

- 38.Are the requirements for children with disabilities aged 3 through 5 who are placed by their parents at private preschool programs, including home daycare programs, the same as the requirements for children with disabilities parentally-placed at private elementary and secondary schools?
- 39. Are children with disabilities placed by their parents at private schools entitled to a free appropriate public education at the private school?
- 40.If parents choose to enroll their child with a disability at a private school because of their preference for the private school, are there any circumstances in which a public agency would be required to make FAPE available to such a child in the future?
- 41.Are there any particular qualifications that are applicable to personnel who provide special education or related services to those parentally-placed private school children with disabilities LEAs elect to serve?
- 42. How could a State educational agency monitor to ensure that parentally-placed private school children with disabilities are being served in a manner that complies with Part B?
- 43. How can representatives of parentally-placed private school children with disabilities, including parents of these children, have input into OSEP's reviews of States as part of its continuing improvement monitoring process?
- 44.ls home school considered a private school? What if a child is below a State's compulsory school age and receiving services from an unapproved or uncertified home day care or other location strictly for child care purposes?
- 45.If under State law, dual enrollment of a child in both a public agency program and a private school is required in order for the child to receive special education and related services from a public agency in connection with a parental private school placement, does the parentally- placed private school child with a disability have a right to FAPE?

# Worst School Outrage of the Month

Reed Martin, J.D.

# "YOU CHOSE TO PUT YOUR CHILD IN A PRIVATE SCHOOL SO WE DO NOT OWE YOU ANYTHING"

Public school programs are sometimes so bad that the parent is forced to remove the child and get services elsewhere. Sometimes it is to get appropriate educational services. Sometimes it is literally to save the child's life.

This writer's first full trial under the IDEA, 23 years ago, dealt with a child so intentionally humiliated by a school employee in front of a high school assembly that he fled school and was clearly suicidal. His parents placed him, under psychiatric care, in a residential facility. The school dropped him from their rolls for excessive absences. When the parents informed the school they had to place him in a residential facility, the school formally dismissed him as "moved out of district."

We sued successfully for 100 per cent of the cost of that private placement. At about the same time this writer had the chance to *consult* on a *case that eventually* reached the U.S. Supreme Court and established the standard nationwide, School Committee of the Town of Burlington, Massachusetts v. Department of Education of Massachusetts, 471 U.S. 359 (1985). The parent had to pull his son out of the public school to get an appropriate reading program and wanted reimbursement. The Supreme Court said at page 370 that "parents who disagree with the proposed IEP are faced with a choice: go along with the IEP to the detriment of their child if it turns out to be inappropriate, or pay for what they consider to be the appropriate placement..: We are confident that by empowering the court to grant appropriate relief Congress meant to include retroactive reimbursement to parents as an available remedy in a proper case." The Supreme Court reinforced that decision in Florence County Schools v. Carter, 114 S.Ct. 361 (1993).

For 15 years, parents have had the right to appropriate private services at public school expense when the public school offering was not appropriate. That is true under Section 504 as well as under the IDEA (see Borough of Palmyra Bd. of Educ. v. F.C., 28 IDELR 12 (D. NJ 1998)). Congress was told by school board lobbyists during the hearings that produced the 1997 IDEA Amendments that too many parents were getting private services at public school expense so Congress tightened the rules.

At 20 U.S.C. 1412(a)(10)(C) "Payment for Education of Children Enrolled in Private Schools Without Consent of or referral by the Public Agency," the Congress makes clear what the current rule is. "A court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment."

The Congress then required that the parent give the public school one last chance to make an appropriate offering. At the last IEP meeting when the parent decided to "go private" the parent is asked to inform the IEP team that the parent does not *believe the* proposed IEP is appropriate and that they intend to enroll their child in a private school at public expense. [1412(a)(10)(C)(iii)] That is intended to make the school think twice. If the parent does not do this, then a court might reduce or deny reimbursement to the parents.

However, the Congress recognized that if the parent is to be held to this notice requirement to the school, then the school must have given full notice to the parents. 1412(a)(10)(C)(iv)(IV) states that "the cost of reimbursement may not be reduced or denied for failure to provide notice" if the parents bad not received the proper notice from the school. In Carnwarth v. Bd. of Educ. of Anne Arundel Co., 29 IDELR 853 (D. MO 1998) the federal District Court found that the parents failure to give appropriate notice was nullified by the school district's failure to give the parents their notice of the new rules.

This places schools in real jeopardy because virtually no school is giving the notice that is required by the statute.

These new requirements are also in the 1999 IDEA Regulations at 34 C.F.R. 300.403 and basically reinforce the changed language in the statute. "A court or a hearing officer may require the agency to reimburse the parents for cost of that enrollment if a court or hearing officer finds that the agency had not made a Free Appropriate Pubic Education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate."

The regulations include one of the key additions made by the Carter case: "A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the state education agency and local education agencies." 34 C.F.R. 300.403(c).

This applies to any expense by a parent when they say that the school program is inappropriate and that the parent has been forced to go private — to get after school tutoring (see Garland Ind. Sch. Dist. v. Wilks, 657 F.Supp. 1163 (N.D. TX 1987), to get services over the summer (see Alamo Heights v. St. Bd. of Educ. 790 F.2d 1153 (5th Cir. 1986) or to get private placement, including private residential placement, as discussed above.

The key, as discussed, is whether the public school is providing an appropriate education and the parent simply prefers the private, as opposed to the school not providing an appropriate education and forcing the parent to go private. What is an appropriate public education? The Supreme Court defined the required "appropriate" offering by the public school in Board of Educ. v. Rowley, 458 U.S. 176 (1982). The Court said two questions must be asked: were the Act's procedures complied with, then second, was the resulting IEP reasonably calculated to confer benefit.

Parents facing this "you went private so we owe you nothing" attitude of their school district need to show that they were denied a free appropriate public education and were forced to go private. The best way to do that, in this writer's experience is to show, under the Supreme Court's Rowley standard, that "The Act's procedures were not complied with" — especially (1) proper procedural safeguard notices in accord with the 1997 IDEA

Amendments and the 1999 Regulations were never given, (2) Prior Written Notice [20 U.S.C. 1415(b)(3)( and (c)] was never given, (3) a proper evaluation was never conducted in accord with the 1997 IDEA Amendments and (4) a proper MP meeting was never held in accord with the 1997 IDEA Amendments. In this writer's opinion all four of those defects could probably be shown in almost any school district in America today.

The above discussion contemplates that the parent is seeking the jurisdiction of a hearing officer or court. However, changes in the state education agency complaint requirements make possible reimbursement from the state (which could then, of course, take the money away from the noncompliant local district). Upon a complaint to the state education agency about the parent being forced to expend their own funds in a private setting because the public school program was not appropriate, the new 34 C.F.R. 300.660(b)(1) requires that the state education agency "must address how to remediate the denial of those services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child." The "other corrective action" could also be an order to continue the private services at public school expense until the time that the public school does in fact offer a free appropriate public education.



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# Public Charter Schools -- Changes from Proposed Rules --**ARCHIVED INFORMATION**

#### March 1999

#### Provisions on "Public Charter Schools" in IDEA '97.

The IDEA Amendments of 1997 contained two specific provisions on public charter schools, including requiring that -

- 1. In situations in which charter schools are public schools of the LEA, the LEA must
  - a. serve children with disabilities in those schools in the same manner that it serves children with disabilities in its other schools, and
  - provide Part B funds to those schools in the same manner as it provides Part B funds to its other schools (section 613(a)(5)); and
- An SEA may not require a charter school that is an LEA to jointly establish its eligibility with another LEA unless it is explicitly permitted to do so under the state's charter school statute (section 613(e)(1)(B)).

In addition, the House Committee Report on Pub. L. 105-17 stated that "The Committee expects that charter schools will be in full compliance with Part B." (H. Rpt. 105-95, p. 97 (1997))

#### Proposed Provisions on Charter Schools in NPRM.

The NPRM (1) incorporated the above statutory provisions on public charter schools -- in proposed §300.241 (Treatment of charter schools and their students), and proposed §300.190(b) (Charter school exception); (2) added a note following §300.241 to reflect the House Committee Report related to charter schools; and (3) added a note following the definition of "LEA" to address the responsibility of charter schools that meet the definition of "LEA" and receive

#### Public Comments on Charter Schools -- Requested Changes.

A number of public comments on the NPRM expressed concern about the note following the definition of "LEA," stating that it provided an inadequate explanation of charter schools under Part B (i.e., it focused only on public charter schools that are LEAs under state law and excluded those schools that are defined by state law as being part of an LEA). Many of the commenters requested that the note either be deleted or modified.

Changes in Charter School Provisions to Address Public Comments. A number of changes have been made to the Part B regulations to specifically address the commenters' concerns related to charter schools, including -- (1) deleting the note following the definition of "LEA" (because it did not provide a full explanation of the responsibilities of public charter schools under the Part B regulations); and (2) making other changes, to provide additional guidance related to public charter schools, as follows:

- A. APPLICABILITY OF PART B REGS TO PUBLIC CHARTER SCHOOLS. Proposed §300.2 (Applicability of this part to state, local, and private agencies) has been revised to clarify that the Part B final regulations apply to all public agencies, including public charter schools that are not included as LEAs or educational service agencies (ESAs), and are not a school of an LEA or ESA
- "CHARTER SCHOOLS" IN DEFINITIONS OF "LEA" AND "PUBLIC AGENCY," as follows:
  - "Local educational agency" (LEA). The proposed definition of "LEA" has been redesignated as §300.18, and amended to clarify that the term includes public charter schools that are established as an LEA under state law. (§300.18(b)(2))
  - "Public agency." The proposed definition of "public agency" has been redesignated as §300.22, and amended to add to the list of examples of a public agency, "public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA
- C. CHILDREN WITH DISABILITIES IN PUBLIC CHARTER SCHOOLS.
  - A new §300.312 has been added to the final regulations, as follows:

    1. Children and parents retain all rights. New §300.312(a) has
    - been added to make clear that -- (A) children with disabilities who attend public charter schools and their parents retain all rights under Part B; and (B) compliance with this part is required regardless of
    - whether a public charter school receives Part B funds. **Responsibilities of Charter schools, LEAs, and SEAs.** New §300.312(b)-(d) addresses the responsibilities of each entity (public charter schools, LEAs, and SEAs), subject to state law, as follows:
      - a. PUBLIC CHARTER SCHOOLS.

Charter schools that are LEAs and receive Part B funds must ensure that the Part B requirements are met, unless state law

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assigns that responsibility to some other entity. (For example, the charter school that is an LEA must ensure that all children with disabilities attending the school receive services in accordance with a properly developed IEP, that all procedural safeguards provisions are met in terms of provisions such as parental consent and written prior notice, and that all other applicable requirements of IDEA are met.)

. LEAS.

If a public charter school is a school of an LEA that receives Part B funds and includes other public schools, the LEA must – (1) ensure that the requirements of this part are met, and (2) meet the requirements of §300.241 (i.e., serve children with disabilities attending charter schools, and provide Part B funds to those schools in the same manner that it does for other schools). (Proposed §300.241 has been retained in the final regulations.)

c. SEAs.

If a charter school is neither an LEA receiving funding, or part of an LEA that receives funds, the SEA is responsible for ensuring that the requirements are met by that school.

\* On October 22, 1997, a Notice of Proposed Rulemaking (NPRM) was published in the *Federal Register* to amend the regulations under Part B of the Individuals with Disabilities Education Act (IDEA). The purposes of the NPRM were to implement changes made by the IDEA Amendments of 1997, and make other changes that facilitate the implementation of Part B. The changes made since the NPRM are based mainly on public comments received.

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# The IDEA and Charter Schools

Posted on October 29, 2008 by randychapman

# What are charter schools?

Many parents, hoping to increase school accountability and improve school services for their children, are turning to charter schools. Public charter schools are public schools that are created by an agreement (charter) between the group founding the school and an authorizing agency, like a county or state school board. The authorizing agency must have the legal authority under state law to approve the charter. According to the special report **Charter Schools Designed for Children** Disabilities: An Initial Examination of Issues and Questions Raised, at least forty states, the District of Columbia, and Puerto Rico have adopted laws authorizing charter schools. Charter schools are generally authorized for a set period of time, usually three to five years. The authorizing agency usually has some responsibility to oversee the charter school and that oversight is often linked to the charter school having its charter renewed. Charter schools under federal law must be non profits and since they are public schools, they may not charge tuition. (see What are some typical characteristics of charter schools? Primers on Implementing Special Education in Charter Schools).

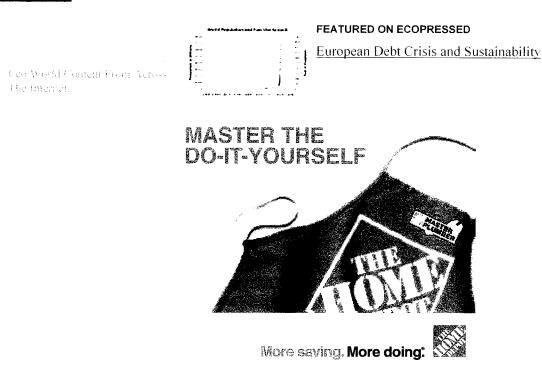
What about the IDEA, Section 504, and the ADA?

Public charter schools may be exempt from some state or local laws or requirements, but charter schools must comply with the IDEA and may not discriminate against qualified

persons with disabilities. The IDEA specifically states that children with disabilities and their parents retain all of their rights under Part B of the IDEA. And, since public charter schools receive public funding they are public agencies that must comply with Section 504 and the Americans with Disabilities Act (ADA). While charter schools may not deny admission to a student based on the student's disability, charter schools may establish minimum eligibility criteria for admssion. Under 504 and the ADA a student with a disability would be entitled to reasonable accommodations and modifications to meet that criteria. Similarly, a charter school could require that students have completed certain subjects, if the charter school specializes in a specific area of study.

While charter schools must comply with the IDEA, Section 504, and the ADA, there is a tension between these federal laws and the independant and autonomous nature of charter schools. Thus, tracking responsibility for ensuring charter school compliance with federal special education law can be confusing. Charter schools may be licensed by a school district and operate just like any other public school in the district. In that circumstance, under the IDEA, the school district is the local education agency (LEA) and has the overall responsibility to ensure that the charter school complies with the IDEA, 504, and the ADA. If a parent believed the charter school was not complying with federal law, the parent could complain to the school district.

But, in some circumstances, the charter school may be its own school district and, for IDEA purposes, be the local education agency (LEA). For example, the state board of education may have granted the school it's charter and the charter school is the local education agency and is not under the direction of a school district. If the charter school is the local education agency, then the charter school is responsible for all aspects of providing special education to its students with disabilities (see <a href="ERIC Digest: Public Charter Schools and Students with Disabilities">ERIC Digest: Public Charter Schools and Students with Disabilities</a>). Of course, under the IDEA, the state education agency (SEA) is responsible for ensuring that all students with disabilities in a state receive a free appropriate public education. So, when in doubt as to the responsible agency for ensuring that a charter school or school district complies with the IDEA, you can always contact your <a href="state-education agency">state-education agency</a>. If there are concerns about compliance with Section 504 and the ADA, you can contact the <a href="Office for Civil">Office for Civil</a> Rights.



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#### BACKGROUND

One of the fastest growing areas of public school reform is the charter schools movement. Charter schools are public schools under contract - or charter - between a public agency and groups of parents, teachers, community leaders, or others who want to create alternatives and choice within the public school system. Charter schools create choice for parents and students within the public school system, while providing a system of accountability for student achievement. Charter schools also encourage innovation and provide opportunities for parents to play powerful roles in shaping and supporting the education of their children. As a result, charter schools can spur healthy competition to improve public education.

In exchange for increased accountability, charter schools are given expanded flexibility with respect to select statutory and regulatory requirements. Federal legislation provides support for the creation of charter schools as a means of promoting choice and innovation within public school systems. Of course, charter schools, like all public schools and other recipients of federal financial assistance, must operate consistent with civil rights laws.

The U.S. Department of Education (ED), Office for Civil Rights (OCR) enforces a number of civil rights laws that apply to public schools, including charter schools. These laws include: Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs; Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits discrimination on the basis of disability; and the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age. These laws apply to programs and activities that receive federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits discrimination on the basis of disability by public entities, including public schools- Title II applies to public entities, regardless of whether they receive federal financial assistance. OCR receives and resolves more than 5,000 complaints of discrimination each year and provides technical assistance on a wide range of issues.

In addition, the U.S. Department of Justice, Civil Rights Division (CRD) works on a variety of legal issues involving elementary and secondary schools. DOJ enforces in the courts many of the same statutes that OCR enforces administratively, including Title VI, Title IX, Section 504, and Title II. DOJ also enforces Title IV and Title VII of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974. DOJ may intervene in private suits that allege violations of education-related anti-discrimination statutes and the Fourteenth Amendment of the U.S. Constitution. CRD is also responsible for monitoring more than 400 school districts currently covered by

# Applying Federal Civil Rights Laws to Public Charter Schools

desegregation court orders in over 200 desegregation cases where the United States is a party.

ED and DOJ support the implementation of charter schools as a valuable way to enhance choice among public schools and to give more students the opportunity to learn to challenging standards. This guidance seeks to aid charter school developers and operators in their efforts to plan, develop, and deliver their important educational programs in a nondiscriminatory manner.

To avoid distraction within this guidance, we have often used acronyms and abbreviations to substitute for the names of agencies and multiword concepts. The meaning of each is explained within the context. For your convenience, we also include the following key to the acronyms and abbreviation you will find in this publication.

CRD - Civil Rights Division, U.S. Department of Justice DOJ - U.S. Department of Justice

ED - U.S. Department of Education

FAPE - Free appropriate public education

IDEA - Individuals with Disabilities Education Act LEA - Local Educational Agency

LEP - National-origin minority, limited-English proficient

OBEMLA - Office of Bilingual Education and Minority Languages Affairs,

U.S. Department of Education

OCR - Office for Civil Rights, U.S. Department of Education

OSEP - Office of Special Education Programs, U.S. Department of Education

OSERS - Office of Special Education and Rehabilitative Services,

U.S. Department of Education

SEA - State Educational Agency

Section 504 - Section 504 of the Rehabilitation Act of 1973

Title II - Title II of the Americans with Disabilities Act of 1990

Title VI - Title VI of the Civil Rights Act of 1964

Title IX - Title IX of the Education Amendments of 1972

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SEA - State Educational, Agency

Section 504 - Section 504 of the Rehabilitation Act of 1973

Title II - Title II of the Americans with Disabilities Act of 1990

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Title IX - Title IX of the Education Amendments of 1972

# RESPONSIBILITIES FOR CIVIL RIGHTS COMPLIANCE

Perhaps the most common image associated with education is the relationship between a child and his or her teacher. Of course, public education is that and more. It includes shared responsibility by many entities, including the school, the school district, and the state, acting in cooperation with parents. In much the same way, the responsibility for safeguarding the civil rights of the students, parents, and teachers in a public school, such as your charter school, is shared and does not fall exclusively on any one individual or agency.

Who is responsible for making sure that my charter school is complying with federal civil rights laws?

Public schools, including your charter school, are responsible for complying with several federal civil rights laws, based on their status as recipients of federal financial assistance and as public entities.

Other entities share responsibility for your school's compliance. If your charter school is part of a Local Educational Agency (LEA), such as a school district, the LEA is also responsible for ensuring that your school is complying. Furthermore, if your charter school receives federal funds through the State Educational Agency (SEA) or an authorized public chartering agency that

Sources of federal education funds include programs authorized under the Elementary and Secondary Education Act of 1965, as amended, including the Public Charter Schools Program.

receives federal funds, or is chartered by the SEA or its designee, the SEA is also responsible. The SEA is responsible in all cases for having methods of administration that are not discriminatory, including procedures for chartering schools.

In general, what are the federal civil rights obligations that apply to public elementary or secondary schools, including my charter school?

Public schools, including charter schools, must not discriminate on the basis of race, color, national origin, sex, or disability in any of their programs or activities. The primary federal civil rights laws addressed in this publication include:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; and
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability.

Other applicable federal civil rights laws not directly addressed in this publication include:

- Age Discrimination Act of 1975;
- Title IV of the Civil Rights Act of 1964;
- Title VII of the Civil Rights Act of 1964; and
- Equal Educational Opportunities
   Act

### RECRUITMENT AND ADMISSIONS

Students attend charter schools by choice, but their admission might be subject to certain qualifications or selection procedures, including a lottery. This is one factor that may distinguish the operation of your charter school from many other public schools. Although your civil rights obligations are no different from those of other public school officials, the fact that your students are not simply assigned to attend your charter school underscores your need to be mindful of the rights of children and parents in your community when publicizing your school to attract students and when evaluating their applications for admission.

\*\*\*\*\*\*

Do I have any responsibility regarding the recruitment of students in order to be in compliance with federal civil rights laws?

Yes. When announcing your charter school or conducting outreach, you may not discriminate against students of a particular race, color, or national origin, or against students with disabilities. If your charter school is co-educational, then you may not discriminate in recruitment on the basis of sex. If your charter school recruits students, you should recruit them *Title IX allows single-sex programs*, from all segments of the community served by the school, including students with disabilities and students of all races, colors, and national origins. Also, you may target additional recruitment efforts toward groups that you believe might otherwise have limited opportunities to participate in your program.

What steps should I take when providing outreach information to parents who are limited-English proficient?

You must make sure that parents in your community who are not proficient in English have the opportunity to understand the outreach information provided to other parents. This information may need to be provided in a language other than English. For example, if outreach materials are made available to parents, you should provide the content of the materials to parents who do not understand English in a manner and form they understand. If you conduct public informational meetings with parents or community groups, you should make sure that limited-English proficient parents who can be reasonably expected to attend have a meaningful opportunity to understand what is being presented.

May my charter school consider race in admissions decisions?

A charter school may take race into account in making admissions decisions in limited circumstances. Race may be used only in a narrowly-tailored way to meet a compelling interest, such as to remedy discrimination, to promote the educational benefits of diversity, or to reduce minority-group isolation. The state of the law in this area is undergoing close examination by the courts. The legal standard that applies to your state may vary, depending on State law and the federal circuit in which your state is located.

For more information assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance Concerning admissions, contact serves your state and the Federal Register Magnet Schools Assistance Concerning and the Federal Register Magnet Schools Register Magnet Schools Register Magnet Sc

For more information and technical assistance concerning the use of race in admissions, contact the OCR Office that serves your state and see, for example, the Federal Register notices on the Magnet Schools Assistance Program application notice, at http://www.ed.gov/legislation/FedRegister/announcements/1998-1/021798c.html.

What is my obligation to make sure that student applicants with disabilities are treated in a nondiscriminatory manner in admissions?

Under Section 504 and Title II, you may not categorically deny admission to students on the basis of disability. For example, you may not deny admission to a student with a disability solely because of that student's need for special education or related aids and services. Students with disabilities must have the opportunity to meet any appropriate minimum eligibility criterion for admission,

For more information on civil rights requirements regarding the educational needs of students with disabilities, see Questions 23 to 30 concerning Educating Students with Disabilities.

Does Title IX permit single-sex classes, programs, or schools?

An exemption in Title IX permits LEAs to establish single-sex elementary or secondary schools as long as they are not vocational schools- However, when an LEA establishes a public school for one sex - unless it is necessary to remedy discrimination - any student excluded based on sex must have made available comparable courses, services, and facilities, pursuant to the same policies and criteria of admissions:

consistent with the mission of the charter school and civil rights

requirements.

If you are thinking of establishing a single-sex class, program, or school, we encourage you to contact your LEA and the OCR office that serves your state for more guidance. ED is reviewing its Title IX regulation pertaining to single-sex programs and schools.

The Title IX regulation generally prohibits single-sex classes or plograms in co-educational schools-There are some exceptions, including contact sports, chorus, and portions of classes dealing with human sexuality.

Separate classes may also be provided for pregnant students, but participation must be voluntary. Title IX also allows for single-sex classes and programs if they are necessary to

remedy discrimination found by a court or OCR, or as a response to conditions that have
limited participation by sex.

# SCHOOLS AFFECTED BY DESEGREGATION PLANS OR COURT ORDERS

Some school districts have desegregation obligations under plans or court orders that could affect or be affected by the establishment of your charter school, even if your charter school is its own LEA. Typically, desegregation plans and court orders are resolutions of past segregative discrimination by school districts determined by OCR or by the courts, in some instances with the participation of the U.S. Department of Justice, Civil Rights Division (CRD). If the jurisdiction in which your charter school is located is under a desegregation plan or order, there are steps you can take to ensure compliance and avoid unnecessary delays.

How do I determine whether my proposed charter school is in a jurisdiction with a duty to desegregate?

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If you are uncertain whether your charter school is in a jurisdiction that is covered by an existing desegregation plan or court order, you may contact several entities for assistance. First, to determine if

there is an applicable court order where the United States is a party to the case, you may contact the appropriate LEA, your SEA, or CRD. To assist you in this process, CRD has provided your chief state school. officer with a list of the LEAs in the state that are subject to such a court order. Second, to determine if there is an applicable OCR Title VI desegregation plan, you may contact the appropriate LEA or the OCR office that serves your state.

If you have questions about a desegregation court order where the United States is a party to the case, you may contact CRD at 202-514-4092. If you have questions about a Title VI desegregation plan, you may contact the OCR office that serves your state. A list of OCR offices is attached.

You should also know that there are other desegregation plans and orders that do not involve CRD or OCR. These desegregation plans and orders only involve private parties in state or federal courts, or state agencies that have ordered districts to desegregate.

In some states and school districts there may also be other obligations under state or local laws or policies, such as those to promote integration or diversity, that could affect or be affected by your charter school. In these cases, you should consult your SEA or the appropriate LEA to determine whether the jurisdiction has a desegregation obligation.

What steps should my LEA or I take in order to establish a school that complies with an existing desegregation plan or court order?

The establishment of any new public school, including a new charter school, in a jurisdiction with a duty to desegregate must be consistent with the LEA's obligations under its desegregation plan or court order. Alternatively, it is possible to seek a modification of the applicable plan or order. If you are establishing a charter school in a jurisdiction that is under an OCR Title VI desegregation plan, OCR should be consulted on any applicable Title VI obligations. Similarly, CRD should be contacted if you are establishing a charter school in a jurisdiction under a desegregation court order in which the United States is a party to the case. You, the appropriate LEA, or your chartering authority may contact these agencies. Early consultation will speed the process for your charter school proposal and can avoid unnecessary delay or disruption in the future. Review of any new school by a court or OCR involves a case-by-case, fact-bound determination that takes into account the particular charter school's impact on the ability of the appropriate LEA to comply with its unique desegregation obligations.

What information is needed for this consultation process to be effective?

As a first step, you should provide a copy of the charter school application to either OCR or CRD. In general, OCR and CRD are interested in the effect a new public school will have on the appropriate LEA's obligations. Your charter application will contain at least some of the information needed to make this determination, such as those items listed below.

Because charter school applications vary from state-to state, and because each court order and OCR Title VI desegregation plan is different, CRD or OCR may need more information than is included in your charter application. The information below is especially helpful to CRD or OCR in evaluating the impact of your school on the LEA's desegregation obligations, although additional information may be necessary:

- theme and target population;
- recruitment and admissions processes;
- proposed location;
- enrollment capacity of the school;
- projected racial composition of students, faculty, and staff for the coming school year;
   and
- impact on racial composition of students at other schools in the LEA.

# Applying Federal Civil Rights Laws to Public Charter Schools

In the case of a court order, what does CRD do with this information?

If your jurisdiction is under a desegregation court order where the United States is a party to the case, you should consult with CRD. When CRD receives information on your charter school, it will review your submission, its own files, and any other readily available information to see if these sources provide enough data to reach a position about the charter school's impact on compliance with the desegregation order. If more information is needed, CRD will contact you and the appropriate LEA to request the additional information.

When an LEA is subject to a desegregation court order, it is the court, not DOJ, that determines whether or not to approve a new school. Where approval is required, the court will ask the other parties to the case, including

In many cases, the limited number of students enrolled in a charter school does not have a significant impact on the attendance patterns and enrollment in the appropriate LEA's other schools, and does not adversely affect compliance with the desegregation order. In such cases, and in other cases where CRD concludes there is no adverse impact, CRD will advise you and the appropriate LEA that it has no objection to the proposed operation of the charter school.

If CRD's review of the information raises concerns about compliance with the desegregation order, CRD may offer suggestions and modifications that address these concerns, where appropriate-

Who is responsible for notifying the court about a new charter school to obtain court approval when required?

If your jurisdiction is under a desegregation court order, the appropriate LEA may need to have the court approve any new school, including a charter school. Where court approval is required, charter school developers should contact their LEA or SEA for information on how best to obtain the approval of the court. Where appropriate, CRD may be able to make a joint motion with a charter school or LEA to seek court approval for a new charter school. However, CRD can not represent charter school developers before the court, and can not submit motions on their behalf.

In the case of a desegregation plan, what does OCR do with this information?

If your jurisdiction is under an OCR desegregation plan, you should consult with the OCR office that serves your state. After OCR receives information on your charter school, we promptly examine it along with the Title VI desegregation plan and any other readily available information to determine if establishing the new school would be consistent with the appropriate LEA's

In the case of a court order, what does CRD do with this information?

If your jurisdiction is under a desegregation court order where the United States is a party to the case, you should consult with CRD. When CRD receives information on your charter school, it will review your submission, its own files, and any other readily available information to see if these sources provide enough data to reach a position about the charter school's impact on compliance with the desegregation order. If more information is needed, CRD will contact you and the appropriate LEA to request the additional information.

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If your jurisdiction is under an OCR desegregation plan, you should consult with the OCR office that serves your state. After OCR receives information on your charter school, we promptly examine it along with the Title VI desegregation plan and any other readily available information to determine if establishing the new school would be consistent with the appropriate LEA's

# Applying Federal Civil Rights Laws to Public Charter Schools

Title VI obligations. If OCR needs more information, we will contact you and the appropriate LEA. In many cases, a charter school does not adversely affect compliance with the OCR Title VI desegregation plan because the limited number of students enrolled has a minimal effect on the attendance patterns and enrollment in the LEA's other schools. In such cases, and in other cases where OCR concludes there is no adverse impact, OCR will advise you and the appropriate LEA that it has no objection to the proposed operation of the charter school.

If OCR's review of the information raises concerns about compliance with the LEA's Title VI obligations, OCR may offer suggestions and modifications that address these concerns, where appropriate.

# SELECTION OF FACILITIES TO PROVIDE ACCESS TO STUDENTS WITH DISABILITIES

For some people with physical disabilities, an otherwise outstanding program may as well not exist if it is located in an inaccessible facility. Section 504 and Title II require that persons with disabilities have access to the programs and activities offered at public schools. Because charter schools often open in older buildings that may lack attention to accessible design or in contemporary or renovated buildings that were not originally designed for use as public schools, it is important that you be aware of these requirements.

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Are there requirements for physical access that apply when I select the facilities that will house my charter school?

Yes- An LEA (including your charter school if it is its own LEA) may not deny persons with disabilities, including parents and students, the benefits of programs and activities offered at its schools because of inaccessible facilities. The selection of the facility for your charter school may not result in excluding or limiting enrollment of people with disabilities from any school program or activity.

The program accessibility requirements of Section 504 and Title II often involve

Issues regarding accessible programs and facilities, please contact the OCR Office

Are there different legal requirements that apply to charter schools located in existing facilities as compared to newer facilities?

Yes. For existing facilities, a charter school's programs and activities, when viewed in their entirety, must be readily accessible to individuals with disabilities. Both the Section 504 and Title II regulations permit considerable flexibility in meeting this legal standard. For example, structural changes are not required in existing facilities if nonstructural methods are effective in achieving program accessibility.

For new construction and alterations, Section 504 and Title II require that a new or altered facility (or the part that is new or altered) must be readily accessible to and usable by individuals with disabilities- The focus here is on providing physical access to buildings and facilities in addition to programs and activities- This means you must make sure that a child with a physical disability has access to every part of the new building or the parts that are newly-altered.

For example, if your charter school is in a new building, all parts of the building, including the third-floor chemistry labs, must be accessible for use by persons with disabilities. In contrast, if your charter school is in an existing facility, you might be able to meet the program accessibility requirement by locating at least one chemistry lab in an accessible location like the first floor.

How do I know if a building is considered an existing facility or new construction?

Any building or alteration by or on behalf of your LEA or your charter school for which construction began since June 1977; is considered new. Any construction or alteration that was not done by or on behalf of your LEA or charter school is likely to be considered an existing facility, regardless of its age.

Any construction that began before June 4, construction or alteration by or on behalf of your LEA or charter school that began after January 26, 1992, is considered new. Construction that began on or between those two dales is new under Section 504 and existing under Title II.

What should I consider when acquiring the space in which I operate my program?

In summary, when you purchase, take title to, lease, or rent a facility, you are encouraged to look for the most accessible space available. At a minimum, you must make sure that the educational program, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities, in accordance with the requirements for existing facilities-Construction or alteration initiated by you or for your charter school must also meet standards for new construction.

# EDUCATING STUDENTS WHO ARE LIMITED-ENGLISH PROFICIENT

A growing number of students in the public school population are national-origin minority students who are limited-English proficient (LEP). These children include recent immigrants to the United States, and other children raised with languages other than English. Generally, these children's limited ability to speak, read, write, and understand English well enough to participate meaningfully is a barrier to their educational success. Federal civil rights law requires that public schools provide LEP children appropriate services designed to teach them English and the general curriculum.

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What civil rights requirements apply if there are LEP students attending my charter school?

In Lau v. Nichols, the US. Supreme Court held that school districts must take affirmative steps to help LEP students overcome language barriers so that they can participate meaningfully in each school district's programs. Under Title VI, public schools and LEAs must identify LEP students and provide them educational services so they can learn English-language skills and acquire the knowledge and skills in academic content areas that all students are required to know.

Public schools are not required to adopt any particular model of instruction for LEP students. However, where a program is necessary to ensure equal educational opportunity for LEP students, it must be based on a sound educational theory, adequately supported with qualified staff and adequate resources so that the program has a reasonable chance for success, and periodically evaluated and revised, if necessary.

Are there federal funds available to help me educate LEP students?

Yes. A wide variety of resources are available to help you serve your charter school's LEP students. In addition to receiving general educational funds and state and local funds appropriated for the education of LEP students, LEAs may qualify for Federal financial assistance. For example, like any public school, your. charter school might qualify for funds from Title I, Title VII, or other titles of the Elementary and Secondary Education Act of 1965, as amended. These grant funds may be used to supplement the

services that the LEA is required to provide using state and local educational funds. Title I is administered by ED's Office of Elementary and Secondary Education (OESE). There are specific requirements that you must meet in order to receive Title I funds. Contact your SEA to find out if your charter school is eligible for these funds. LEAs may apply for Title VII funds from ED's Office of Bilingual Education and Minority Languages Affairs (OBEMLA).

Title t provides assistance to at-risk children in high-poverty schools.

World Wide Web site at

http://www.ed.gov/offices/OESE/CEP/ index.html. Title VII helps LEAs meet their needs and objectives related to improving the instruction of LEP students. For further information on Title VII, visit OBEMLA's Web site at http://www.ed.gov/offices/OBEMLA/.

Your charter school might also join with other charter schools or work with LEAs to share qualified staff and other resources. Keep in mind that the obligation to educate LEP students is the same regardless of whether special funds or resources are available.

What must I do to make sure that limited-English proficient parents of students in my school are provided with information about school activities?

Like operators of other public schools, you must ensure that language-minority parents who are not proficient in English receive the same information provided to other parents, in a manner and form they understand. This may include information about their children's program, progress, and disciplinary

progress, and disciplinary problems, as well as information about the school's rules, policies, and activities. This information may have to be provided in a language other than English for parents who are not proficient in English.

You may find assistance through realtime interpreting services, such as those provided by telecommunications

# Applying Federal Civil Rights Laws to Public Charter Schools

Are there additional ways to help me meet my obligations under Section 504 and Title II?

Yes. In addition to providing federal funds to eligible entities, the IDEA allows a state the flexibility to designate some other entity as responsible for ensuring that the requirements of the IDEA are met for children with disabilities enrolled in public schools. Where you are meeting your charter school's Section 504 and Title II FAPE responsibilities through compliance with IDEA requirements, the IDEA's flexibility could help you meet your charter school's Section Contact your SEA to learn whether your 504 and Title II FAPE responsibilities. Generally, if a state state makes this flexibility available to designates another entity as responsible for ensuring that all of the your charter school. IDEA requirements are met for eligible disabled children enrolled in a particular charter school, that designated entity would ensure that FAPE is provided to each of those students, generally at the charter school site.

> Could a child be protected by Section 504 and Title II but not be eligible to receive services under the IDEA?

Yes. Some students with disabilities are protected by Section 504 and Title II, but are not eligible to receive services under the IDEA because they do not need special education. One example would be a child with juvenile rheumatoid arthritis who requires the periodic administration of medication during the school day, but who does not need any special education services. The child may have the right to FAPE under Section 504 and Title II, even though the child is not eligible for services under the IDEA.

Under Section 504 and Title II, an individual with a disability is an individual who either has a physical or mental

more major life activities (such as teaming), has a record of such an impairment, or is regarded as having such an impairment.

May I limit the participation of students with disabilities to certain aspects of my charter school's program?

No. Consistent with civil rights requirements, students with disabilities must be provided a range of choices in programs and activities that is comparable to that offered to students without disabilities. This includes an opportunity to participate in a range of nonacademic or extracurricular programs and activities offered at your charter school.

Is a student with a disability required to be educated with students without disabilities?

A student with a disability must be educated with non-disabled students to the maximum extent appropriate for the disabled student. The education of students with disabilities must be designed to meet their individual needs. A student with a disability may be placed in a setting outside the

regular classroom only if the regular educational environment - including using supplementary aids and services - cannot satisfactorily meet the student's educational needs. The group making placement decisions is responsible for selecting the setting that satisfies these requirements.

The Section 504 regulation requires that any placement decision be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

What do I need to do when a student enrolled in my charter school is believed to have a disability?

When a student is believed to have a disability, your charter school, like any public school, must initiate the procedures established by your SEA or by your LEA (if your charter school is a part of the LEA) to identify and refer the student for evaluation in a timely manner.

What other rights and responsibilities are included in the provision of FAPE regarding student identification, evaluation, and placement?

Under Section 504 and Title II, students with disabilities, and their parents or guardians, are entitled to due process from the LEA concerning student identification, evaluation, and placement. Simply stated, due process is procedural fairness. In the context of FAPE, due process includes notice, the opportunity for review of records, the right to request an impartial hearing with representation by counsel, and a procedure for review. In general, by complying with the relevant. IDEA procedural-safeguard requirements, an LEA is complying with these Section 504 and Title II requirements.

### **ENDNOTES**

The information provided in this document discussed the application of federal civil rights laws to charter schools. As stated above, the document discusses the application of existing law, and does not set forth new law. These same civil rights laws apply to all public schools, including charter schools. The following endnotes provide citations and background information to the major points addressed in this document. Numbers correspond to the answers in this document. These endnotes are not meant to be an exhaustive list of existing regulations or case law, but a brief, helpful summary and restatement of relevant federal civil rights laws. If you have further questions, please contact the OCR office that serves your state. A list of OCR offices is attached.

# RESPONSIBILITIES FOR CIVIL RIGHTS COMPLIANCE

- 1. The federal civil rights laws and the implementing regulations that OCR enforces include: 42 U.S.C. § 2000d et seq., 34 C.F.R. Part 100 (1999) (Title VI); 29 U-S.C. § 1681 et seq., 34 C.F.R. Part 106 (1999) (Title IX); 29 U.S.C- § 794 et seq., 34 C.F.R. Part 104 (1999) (Section 504); 42 U.S.C. § 12101 et seq, 28 C.F.R. part 35 (1999) (Title II); 42 U.S.C. § 6101 et sal, 45 C.F.R. Part 90 (1999) (Age Discrimination Act). (All subsequent citations in this document from the Code of Federal Regulations (C.F.R) are also from the 1999 edition.)
- 2. There are other federal civil rights statutes that apply to public schools, which are not addressed in this publication. These include, but are not limited to:
  - Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000b et seq., which authorizes
    the Attorney General to institute civil actions alleging discrimination on the basis of race,
    color, sex, religion or national origin by public elementary and secondary schools and
    public institutions of higher learning.
  - Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., which prohibits employment practices that discriminate on the grounds of race, sex, religion, and national origin.
  - The Equal Educational Opportunities Act of 1974 (EEOA), 20 U.S.C. § 1701 et seq.,
    which prohibits specific discriminatory conduct, including segregating students on the
    basis of race, color or national origin, and discrimination against faculty and staff. The
    EEOA also requires school districts to take action to overcome students' language
    barriers that impede equal participation in educational programs.

#### I. Introduction

The obligations to serve private school students with disabilities have long been a source of confusion under the IDEA. There are two avenues through which a student with a disability may come to arrive at a private placement. First, the school can place the student in a private facility in order to meet its requirement of FAPE. This situation is commonly referred to as the "publicly placed" private school student, and the school's obligation to serve the student in this instance is the exact same as if the student attended the public school in the second kind of private placement, which commonly is referred to as a "parental placement" or a "unilateral placement," the parents make a personal decision to place the student in a private school without the district's acquiescence.

In contrast to publicly placed private school students, the rights of the parentally placed private school student have been highly unsettled. In this situation, parents may come to the local educational agency seeking the following relief: reimbursement for private school tuition and services obtained by parents and/or the actual provision of public services for the private school student The conditions under which a school district may be obligated to reimburse parents for their expenditures is a distinct area of special education law which is not covered in this publication. The school district's responsibilities to provide special education and related services to the parentally placed private school student population form the focal point of this pamphlet.

All special education and related services needed by private school students fall into one of two categories. The first are those which must be offered in conjunction with the student's core educational curriculum in order to be of benefit to the student. They have been termed "individualized services" in this pamphlet Examples of individualized services include a one-to-one aide or a speech interpreter. The second category of services, referred to as "stand-alone services," are those which do not have to be offered simultaneously with art educational curriculum in order to benefit the student, although they may be more convenient and less disruptive to the rest of the student's educational program if delivered in that manner.

The controversy over the provision of services to parentally placed private school students with disabilities can be reduced to a few key questions, the answers to which will be explored throughout this pamphlet They can be summed up as follows:

- •Is the IDEA intended to provide aid for the education of students with disabilities irrespective of whether they are being educated in public or private schools?
- •When parents choose to place their children with disabilities in private institutions, does their personal decision diminish the package of special education services which the students are entitled to receive, or do these children possess equal rights to special education and related services?

If the rights of private school students are limited in some way ...

- •What are the precise parameters of those rights in terms of extent and degree?
- •To what extent is this duty related to the location of the services—services which are delivered on the site of the private school—versus services offered at a location away from the private school—either the public school site or another neutral location?
- •To what extent does this obligation depend upon the nature of the services which art required by the student?



## **DISCRIMINATION UNDER SECTION 504**

Discrimination under Section 504 occurs when a recipient of federal funds:

- Denies a handicapped person the opportunity to participate in or benefit from an aid, benefit or service which is afforded non-handicapped students (e.g., district practice of refusing to allow any student on an IEP the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is elated to his/her handicapping condition; expelling a student for behavior related to his/her handicapping condition; refusing to dispense medication to-a student who could not attend school otherwise).
- 2. Fails to afford the handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others (e.g., applying a policy that conditions interscholastic sports eligibility on the student's receiving passing oracles in five subjects without regard to the student's handicapping condition).
- Fails to provide aids, benefits, or services to the handicapped person-that are as effective as those provided to non-handicapped persons (e.g., placing a student with a hearing impairment in the front row as opposed to providing her with an interpreter). Note: "Equally effective" means equivalent as opposed to identical. Moreover, to be equally effective, an aid, benefit or service need not produce equal results; it must merely afford an ewe' opportunity to achieve equal results.
- 4. Provide different or separate aids, benefits or services unless such action is necessary to be as effective as the aids, benefits or services provided to non-handicapped students (e.g., segregating students in separate classes, schools or facilities, unless necessary).
- Aids or perpetuates discrimination by providing significant assistance to an agency, organization or person that discriminates on-the basis of handicap (e.g., sponsoring a student organization that excludes persons with handicaps).
- Denies a person with handicaps the opportunity to participate as a member of a planning or advisory board strictly because of his/her handicapping condition.
- 7. Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others (e.g., prohibiting a person with a physical handicap from using a service dog at school).8
- 8. In determining the site or location of a facility makes selections which effectively exclude persons with handicaps, denies them the benefits of, or otherwise subjects them to discrimination. In Hendricks V. Gilhool, EHLR 441:352 (1989), the Pennsylvania Department of Education was found to have violated this section and the EHA by allowing students with disabilities to be located in inferior facilities, such as trailers, wings in basements and unnecessarily restrictive classrooms due to a lack of classroom space.

# Appendix 1

# Comparisons of the Laws

# Appendix 1-1

# Comparison of IDEA and Section 504\*

	IDEA	Sec. 504
1. overall coverage	certain students	certain students, employees, and parents
Ü	extracurricular activities? facilities?	extracurricular activities facilities access and comparability
2. student coverage	specified categories who need special education (e.g., SED, LD)	broad three-pronged definition: 1. substantial mental or physical impairment of major life activity 2. record of 3. regarded as
3. FAPE	special education and related services	special education or regular education and related services

4. procedural	comprehensive notice	general and individual notice with designated coordinator
	MDT with at least one teacher or person knowledgeable of suspected disability	MDT knowledgeable about child, evaluation, data, and placement option
	reevaluation every 3 years IEP required	periodic reevaluation individual service agreement suffices due process hearing—LEA
	due process hearing—SEA responsible	responsible
		grievance procedure

5. substantive obligation	meaningful benefit - cost as secondary factor - child based	commensurate opportunity - reasonable accommodation (cost as a key factor)? - district based
6. responsibility	special education director	Sec. 504 coordinator
7. enforcement	OSEP/SEA - IDEA funds only	OCR - all federal funding
8. funding	partial federal funding	no federal funding-
9. litigation	exhaustion requirement	No exhaustion requirement (unless also IDEA)
10. other	Exhaustion	no exhaustion where no overlap with IDEA
	attorneys' fees	possibly higher attorneys' fees?
	no compensatory damages	compensatory damages?

# Comparison of IDEA and Section 504\*

#### IDEA - 34 C.F.R. Part 300

### 1021 3. 6.1 .16.1 4.1 30

## I. Testing

### A Section 300.531

Before initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted.

## B. Section 300.530(b)

Requires testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children be selected and administered so as not to be racially or culturally discriminatory.

#### Section 504 - 34 C.F.R. Part 104.

# I. Testing

### A Section 104.35(a)

Pre-placement evaluation of any person who, because of a handicap, needs or is believed to need special education or related services must be conducted before taking action with respect to the initial placement and any subsequent significant chance of placement of that person.

# B. Section 104.35(b)

Evaluation procedure shall establish standards and procedures (to evaluate and place handicapped persons) which insure [that] tests [and] any evaluation materials:

- 1. are validated for the specific purpose for which they are used;
- 2. are administered by trained personnel in conformity with the instructions of the producer,
- 3. include those tailored to assess the specific areas of educational need, and are not just a general IQ test
- 4. are selected and administered so as best to insure that the results accurately reflect the aptitude and achievement level, rather than the impairment of the person tested, unless the test measures impairment

<sup>\*</sup> Reprinted with permission from Margaret Bannon Miller, Esq. on behalf of the firm of Bose McKinney & Evans. Indianapolis. Indiana.

#### C. Section 300.532

At a minimum, must insure that any test and other evaluation materials

- 1. are provided and administered in the child's native language:
- 2. are validated for the specific purpose for which they are used;
- 3. are administered by trained personnel in accordance with instructions provided by the producer;
- 4. are tailored to assess specific areas of educational need, not merely a general IQ test
- 5. reflect aptitude and achievement level, not just impairment;
- 6. no single procedure is the sole criterion to determine the appropriate educational program for the child;
- 7. the child is evaluated by multidisciplinary team or group with at least one teacher or person with knowledge of the area of suspected disability;
- 8. the child is assessed in all areas related to the suspected disability.

### D. Section 300.540

The child can be evaluated for a specific learning disability.

## E. Section 300.541

Lists the criteria to determine the existence of a specific learning disability.

#### Section 504 - 34 C.F.R. Part 104.

### II. Definitions

# A Handicapped Children – Section 300.5(a)

Those children evaluated in accordance with § 300.530 - 300.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired. other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impair meats need special education and related

### II. Definitions

# A. Handicapped Person - Section 104.3(j)

Any person:

- 1. that has a physical or mental impairment which substantially limits one or more major life activity.
- 2. has a record of such impairment;
- 3. is regarded as having such an impairment;

# Physical or mental impairment Section 104-3(1)(2)(1)

- Physiological disorder, condition, cosmetic disfigurement or anatomical loss effecting various body systems; or
- 2. any mental or psychological disorder.

# Major life activities - Section 104.3(j)(2)(ii)

Functions including caring for one's self, performing manual tasks, senses, speaking, walking, breathing, learning, and working.

# Record of such impairment - Section 104.3(j)(2)(iii)

History or misclassification of

# Regarded as having such impairment - Section 104.3(j)(2)(iv)

The impairment does not substantially limit a major life activity but the recipient treats the impairment as such a limitation or it is such a limitation as a result of the attitude of others toward the impairment

# B. qualified Handicapped Children - Section 300,300

Provides each state shall insure that a free appropriate public education is available to all handicapped children age 3 through 18 not later than September 1, 1978, and to all handicapped children age 3 through 21 not later than September 1, 1980.

# B. Qualified Handicapped Person - Section 104.3(k)(2)

- A person of an age during which nonhandicapped persons are provided with such services;
- 2. any age when mandatory under state law to provide such services to handicapped person; or
- 3. the state is required to provide a free appropriate public education under § 612 of the EHA.

# C. Free Appropriate Public Education - Section 300.4

Means special education and related services which:

- are provided at public experience under public supervision and direction, and without charge;
- 2. meet the standards of the state educational agency including requirements of Part 300;
- 3. include preschool. elementary or secondary school education: and
- 4. are provided in conformity with an individualized education program.

# C. Free Appropriate Public Education -Section 104.33(b)

The provision of regular or special education and related aids and services that are:

- 1. designed to meet individual educational needs of handicapped persons as well as the needs of a non-handicapped person are met
- 2. based upon adherence to procedures satisfying require meats of the section.

Implementing an IEP in accordance with the EHA is one way to meet the standard of individual education needs. The recipient can refer or place the handicapped person in a program other than one the recipient operates but the recipient is still responsible to insure the requirements are met.

#### D. Section 300.401

Requires that each educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility

by a public agency is provided special education and related services in conformance with an individualized education program, at no cost to the parents, at a school or facility which meets the standards that apply to state and local educational agencies.

#### E. Section 300.402

Requires that the state:

- 1. monitor complaints through procedures such as written reports, on-site visits, and parent questionnaires;
- disseminate copies of applicable standards to each private school to which it has referred or placed a handicapped child;

and

3. provide an opportunity for those private schools and facilities to participate In the development and revision of state standards.

# F. Individualized Education Program (IEP) -Section 300.340

Defines IEP as a written statement for a handicapped child that is developed and implemented in accordance with the following

#### G. Section 300.341

The state educational agency shall insure that each public agency and private school in which it places or to which it refers a handicapped child develop and implement an

#### H. Section 300.342

Each public agency shall have in effect an individualized education

program for every handicapped child receiving special education at the beginning of each school year.

The IEP must be in effect before special education and related services are

### I. Section 300.343

Each public agency is responsible for initiating, conducting meetings for the purpose of developing, reviewing, and revising an IEP

#### J. Section 300.344

The public agency shall insure that each meeting Includes a representative of the public agency, other than the child's teacher, qualified to provide or supervise the provision of special education, the child's teacher, one or both of the child's parents, the child where appropriate and other individuals in the discretion of the parent or agency.

## K. Section 300.345

Requires that each public agency take steps to insure that one or both of the parents of the handicapped child are present at each meeting and afforded the opportunity to participate.

#### L. Section 300.346

Requires that the IEP include the following:

- 1. a statement of the child's present levels of educational performance;
- 2. a statement of annual goals, including short-term instructional objectives:
- statement of the specific educational and related services to be provided to the child and the extent to which the child will be

#### IDEA - 34 C.F.R. Part 300

#### Section 504 - 34 C.F.R. Part 104.

able to participate In regular educational programs;

- projected dates for initiation of services and the anticipated duration of the services;
- 5. an appropriate objective: and
- 6. criteria and evaluation procedures and schedules for determining, at least annually, whether the short-term objectives are being achieved.

### III. Placement

#### A Section 300.533

In evaluating data and making placement decisions the public agency shall use information from a variety of sources. including aptitude and achievement tests. teacher recommendations, physical condition, social or cultural back ground. and adaptive behavior. The public agency should insure that the information obtained from all sources is documented and carefully considered. The placement decision must be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and placement options. The public agency should insure that the placement decision is made in conformity with the least restrictive environment rules.

#### III. Placement

#### A Section 104.35(c)

Lists procedures for interpreting data and making placement decisions which Include considering aptitude and achievement tests, teacher recommendations, physical condition, social and cultural back ground, adaptive behavior. The recipient must document and carefully consider all relevant information. The placement decision must be made by a group, including those knowledgeable of the child and the meaning of the evaluation data and placement options.

#### **B. Section 300.522**

Requires that each handicapped child's educational placement be determined at least annually, is based on individualized education program, and is as close as possible to the child's home. The handicapped child will be educated in the

#### **B. Section 104.34**

Requires that the handicapped person be integrated with non-handicapped persons as much as possible.

school which he or she would attend if not handicapped unless the individualized education program requires otherwise.

#### C. Section 300.550

Requires that to the maximum extent possible. handicapped children including children in public or private institutions, are educated with children who are not handicapped and that special classes, separate schooling or other removal of handicapped children occurs only when the nature or severity of the handicap is such that education in regular classes cannot be achieved satisfactorily.

#### IV. Reevaluation

#### A. Section 300.343(d)

The state must insure that each handicapped child's IEP is reviewed at least annually.

#### **B. Section 300.534(b)**

The evaluation of the child, based on procedures which meet the requirements under § 300.532, must be conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

### V. Significant Change in Placement

#### A. Section 300.504

Before a significant change in the child's placement may be made, written notice must be given to the parents of the handicapped child a reasonable time before such change is made.

#### IV. Reevaluation

### A. Section 104.35(d)

Sets out procedures for reevaluating which are the same as initial evaluation and must be conducted periodically to reevaluate students provided special education and related services. Reevaluation in accordance with the EHA is one way to meet this requirement

## V. Significant Change in Placement

#### A. Section 104.35(a)

A handicapped person must be evaluated in the same manner as the initial placement evaluation is conducted before a significant change in placement may occur.

#### B. Section 300.505

Requires that the notice:

- 1. explain all procedural safeguards available to the parents:
- 2. describe the action proposed or refused by the agency and an explanation for the proposal or refusal:
- 3. describe any options considered and why they were rejected; and
- 4. describe each evaluation procedure, test, record or report the agency used as a basis for the proposal or refusal and any other factors relevant to the agency's proposal or refusal.

#### VI. Due Process

#### A. Section 300.506

Provides that any parent or public educational agency may initiate a hearing on the proposal or refusal to change a child's placement

#### VI. Due Process

#### A. Section 104.36

Provides that for actions concerning identification, evaluation, and placement of a person who because of a handicap has a special need, must provide the following:

- 1. notice;
- 2. opportunity for the parent or guardian to examine relevant records;
- 3. an impartial hearing with the opportunity for participation by the parent or guardian and representation by counsel; and
- 4. review procedure.

Compliance with the EHA is one way to meet the requirements of this section.

#### **B. Section 300.507**

An impartial hearing officer must conduct the hearing.

#### **B. Section 104.61**

Provides that procedures contained in 34 C.F.R. § 100.6 -100.10 (dealing

with compliance investigations and hearings by the Office for Civil Rights under Title VI of the Civil Rights Act of 1964) and Title 34 Part 101 (practice and procedures for hearings under Title VI of the Civil Rights Act of 1964) apply

#### C. Section 300.508

Any party to a hearing has the right to:

- be represented by counsel and by individuals with special knowledge or training with respect to the problems of the handicapped child;
- 2. present evidence and examine witnesses:
- 3. prohibit introduction of evidence that has not been disclosed prior to the hearing;
- 4. obtain a written or electronic verbatim record of the hearing;
- 5. obtain written findings of fact and decisions; and
- 6. the parents have the right to have present the child who is the subject of the hearing and to have an open public hearing.

#### D. Section 300.510

Provides that the decision of the hearing officer may be subjected to an

## E. Section 300.513

Provides that during the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

# WHEN SCHOOL STAFF SHOULD CONSIDER THE EXISTENCE OF A HANDICAP AND POSSIBLE SECTION 504 PROTECTION

- When suspension or expulsion is being considered for any student;
- When retention is being considered for any student;
- When a student shows a pattern of not benefiting from the instruction being provided;
- When a student returns to school after a serious illness or injury;
- When a student is referred for evaluation but it is determined not to do an evaluation under the IDEA;
- When a student is evaluated and is found not to qualify for Special Education services under the IDEA;
- When a student exhibits a chronic health condition;
- When a student is identified as "at risk" or exhibits the potential for dropping out of school;
- When substance abuse is an issue;
- When a handicap of any kind is suspected.
- When a new building or remodeling is being considered;

# Regular Classroom Interventions for ADD/ADHD & Other At-Risk Students\*

#### A. Environmental Modifications

- 1. Physical Adaptations
  - -Study Carrels
  - -Partitions
  - -Stand-up desks
  - -Reading corners
  - -Location of student desk near teacher and near good student role models -Key rules posted in prominent place in classroom
  - -Conservative clothes and accessories that are not distracting

#### Medication

- -Monitor closely
- -Report effects to physician or parent
- -Dispense discreetly and store safely
- 3. Use of Support Personnel
  - -Students in cooperative learning groups
  - -Peer and cross-age tutors
  - -Paid aides
  - Volunteer aides (parents, grandparents)
  - -Parents at home
  - -Professional support staff (psychologists, social workers, etc.)

#### **B.** Instructional Modifications

- 1. Materials
  - -tape recorders, tapes
  - -computers, calculators
  - -games, puzzles
  - -word processors
  - -typewriters

<sup>\*</sup> Reprinted with permission of Dixie Snow Huefner, Department of Special Education, University of Utah, Salt Lake City, Utah.

- -movies, film strips
- -concrete manipulative's
- -legible work sheets with less material on each page

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# Section 504 Modifications\*

Name	Birth Date	Grade
Teacher	School	Date
Pacing  — Adjust time for completion of assignment allow frequent breaks, vary activities of modify assignments requiring coping in situation  Environment  — Leave class for assistance	ten - a timed - - - - -	Assignments  Modify homework Give directions in small units Use written back-up for oral directions Lower reading level of assignment Adjust length of assignment Change format of assignment Break assignment into a series of smaller assignments Reduce paper and pencil tasks
<ul> <li>Preferential seating</li> <li>Define limits (behavioral/physical)</li> <li>Reduce/minimize distractions:</li> <li>visualauditory</li> <li>Cooling off period</li> <li>Provide consistent structure</li> <li>Adjust lighting</li> <li>Adjust room temperature</li> </ul>		<ul> <li>Read directions/worksheets to student</li> <li>Record or type assignments</li> <li>Maintain assignment notebook</li> <li>Avoid penalizing for spelling errors</li> <li>Block off or mask sections of work</li> <li>Use highlighted texts</li> <li>Use taped texts</li> </ul>
Presentation of Subject Matter  — Emphasize teaching  — auditoryvisual  — tactilemulti  — Individual/small group instruction  — Utilize specialized curriculum  — Tape lectures for replay  — Present demonstration  — Utilize manipulatives  — Emphasize critical information/key conce  — Pre-teach vocabulary  — Advanced organizers/study guides  — Provide visual cues	pts	Reinforcement and Motivations  Use positive reinforcement Use concrete reinforcers Check often for understanding/review Peer tutoring Request parent reinforcement Have student repeat directions Emphasize study/organizational skills Repeated review/drill Use behavior modification techniques Before or after school tutoring Emphasize socialization skills
Grading  — Modify weights of examinations  — Credit for projects  — Credit for class participation		Testing Adaptations Oral tests Taped tests Modified format Reduced reading level Adjusted time for completion
Additional Modifications		Legend  - Modification Attempted  + Modification Successful  * Modification Unsuccessful

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#### Classroom Accommodations

#### Section 504 Adaptations Checklist\*

The following adaptations may be necessary for(student's name) to be mainstreamed into the regular classroom.

- Mark student's copy where they have shown acceptable work, not their mistakes.
- Tests and <u>quizzes</u> should be given orally. (If assistance is needed, two day notice is required.)
- Reading assignments should be presented on cassette tapes.
- Make arrangements for homework assignments to reach home with clear, concise directions.
- Use an assignment sheet.
- Reversals and transpositions of letters should not be marked wrong. Instead, reversals or transpositions should be pointed out for correction.
- Provide extra test time.
- Student should be allowed to tape classroom lectures and/or discussions.
- Student should be provided copy of another student's class notes.
- Utilize peer tutoring.
- Utilize cross-age tutoring.
- Avoid placing student under pressure of time or competition.
- Allow extra study time for vocabulary.
- Accept homework papers typed by the student or dictated by him/her and recorded by someone else, if need be.
- Board work and assignments need to be printed.
- Do not return handwritten work to be copied over; paper is often not improved, and this adds to student's frustration.
- Quietly repeat directions to student, after they have been given to the class; then, have student repeat and explain directions to you.
- Let him dictate themes or answers to questions on a cassette tape.
- Accompany oral directions with written directions for the student to refer to (on blackboard or paper).
- Do not require lengthy outside reading assignments.
- Student should be permitted to use cursive handwriting or printing (circle

<sup>\*</sup> Reprinted with permission from Dr. William Coats on behalf of the Fort Wayne Community School Corporation, Fort Wayne, Indiana.

- one). Word recognition is adequate; however, reading comprehension is poor. Oral reading should be on a voluntary basis only.
- Student should sit near front.
- Use study carrel.
- Other:

#### SECTION 504 OF THE REHABILITATION ACT OF 1973

"No otherwise qualified individual with handicaps in the United States shall, solely by reason of her or his handicap, as defined in section 706(8) of this title, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program Or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." (29 U.S.C. Sec.794)

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Individual with handicaps	" any individual who  (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities,  (ii) has a record of such impairment, or  (iii) is regarded as having such an impairment."  (29 U.S.C. Sec.706(8))
physical or mental impairment	"(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory; including speech organs; cardiovascular; reproductive; digestive; Benito-urinary; hermic and lymphatic; skin; and endrocrine; or  (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."  (34 Code of Federal Regulations Part 104.3)
Major life activities	" functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." (34 Code of Federal Regulations Part 104.3)
has a record of such an impairment	" has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities."  (34 Code of Federal Regulations Part 104.3)
правтет	" (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of ethers toward such impairment; or (C) has none of the impairments defined but is treated by a recipient as having such an impairment: (34 Code of Federal Regulations Part 104.3)

grouping, three categories of classroom accommodations emerged as distinctive: physical, instructional, and behavioral (see Figure 1).

Figure 1. Teacher Tips on Developing 504 Accommodation Plans

	INSTRUCTIONAL	BEHAVIORAL	
ACCOMMODATIONS	ACCOMMODATIONS	ACCOMMODATIONS	
•post schedules on board •post classroom rules •preferential seating (near teacher, between well-focused students, away from distractions) •organize workspace •use color codes  Provide Private Work Space: •quiet area for study •extra seat or table •standing work station •'time out" spot  Provide Learning Centers: •reading corner •listening center •hands-on area	Repeat and Simplify Directions: •keep oral directions clear & simple •give examples •ask child to repeat back directions when possible •make eye contact •demonstrate  Provide Directions in Written Form: •on board •on worksheet •copied in assignment book by student and initialed by teacher  Individualize Homework Assignments: •reduce volume of work •break long-term assignments into manageable tasks •allow specified extended time without penalty for lateness •offer alternative assignments •provide extra set of texts at home  Use Technological Learning- Aides: •tape recorders •record lectures and assignments •computers •multi-sensory manipulative's  Modified Testing: •distraction-free area •extended time	Use Positive Reinforcement:  •positive verbal or written feedback  •reward systems and incentives  •give tasks that can be completed  • private signals  •role play situations  •weekly individual time  •conference opportunities  Be Consistent:  •with rewards and consequences  •with posted rules  Promote Leadership & Account  •assign jobs that can be performed well  •"Student of the Week/Month"  •provide responsibilities  Specific Goals & Reinforce w/ Incentives  •state tangible goals and timetable  •reward system  •incentives chart for work and behavior  •student contracts  Communicate w/ Parents.  Teachers, etc.: •letters  •meetings  •phone calls  •use school staff for support	

A Three-Step Process for Creating a Classroom Accommodation Plan

### Figure 6. Parent Checklist for Formal Request of 504 Accommodation Plan

- Cover letter explaining eligibility for accommodations.
- Copy of Federal Guidelines (or abstract) on accommodations to students with ADD.
- List of specific classroom accommodations with rating scale (see Figure 5).
- Self-addressed envelope(s) for teacher-rating scale, to be returned to 504 coordinator.

The parent cover letter makes reference to the student's eligibility for accommodations and attempts to seek formal endorsement of the collaborative accommodation process. Teachers are then asked for their input by filling out the rating scale and returning it to the parent, counselor, or 504 coordinator in a self-addressed, stamped envelope (see Figure 7).

Step 3 is complete when a written consensus of "priority" accommodations is recompiled for inclusion in the student's permanent confidential counselor file. This may be accomplished by using a recompiled Classroom Accommodation Rating Scale as an annual review form (see Figure 5). This revised accommodation list should be made available to all current and future teachers by the counselor, principal, or 504 coordinator. When each teacher documents effective classroom strategies for the student's permanent file, accountability for transition and continuity of accommodations with future teachers may be facilitated. In this way, students with ADHD will not have to start from square one with each new school year.

Figure 7. Sample Parent Cover Letter
RE: (Student's Name)  Dear 504 Administrator/Coordinator:
We are presently in the process of compiling a list of possible classroom accommodations for our son/daughter. We highly value teacher input and are asking that all of's teachers review the list of suggested accommodations. After consideration, please ask that teachers use the enclosed rating sheet to help us analyze the effectiveness of these proposals.
Also enclosed is a copy of the United States Department of Education's "clarification policy to address the needs of ADD students in the classroom." This helps explain that the suggested accommodations have been developed according to Federal guidelines. (DOE/ADD, 1991, p. 7)
Please distribute this suggested list of classroom accommodations and rating scale to each of's teachers. We would like to have the rating sheets returned by with any added suggestions that the teacher(s) might have. For your convenience, we have enclosed several self-addressed, stamped envelopes for the return of the rating sheets to us. When we receive the rating sheets, a compilation of teacher responses will be made. We will report the consensus of opinion regarding the most effective classroom modifications, and forward the revised list back to you.
Thank you for your help.
Sincerely, (Parents' names)

#### **Final Thoughts**

### by Richard Goldhammer and Loring C. Brinckerhoff, 1993

The need for self-advocacy skills in a postsecondary setting is essential. Students who have relied on the support of their parents and others now must be able to help themselves. This vital "rite of passage" enables the learning disabled individual to prepare for independence and success in the adult world. Self-advocacy for college students with learning disabilities can be defined as the ability to recognize and meet the needs specific to one's learning disability without compromising the dignity of oneself or others. Most parents and professionals involved with preparing students with learning disabilities for college would agree that independent decision-making and the ability to express one's needs are two critical elements of self-advocacy.

Yet, success with making decisions and communicating one's needs can be difficult for students with learning disabilities beyond high school. Without these skills, however, the transition from high school to college for students with learning disabilities may be daunting. In the college classroom, for example, students may need to show a professor how they learn best. A student with dyslexia who processes written material more slowly may require additional time on an exam to show what he or she is learning. Further, this additional time can often mean the stark difference between doing well and failing.

Given that self-advocacy is essential for prospective college students with learning disabilities to be successful, this article will present four myths about what self-advocacy is for these students as well as responses to these myths. They were chosen because of their prevalence among students with learning disabilities and their parents. Further, these myths often have had a decisively negative effect on these students' ability to meet needs critical to their success in a college setting. The responses presented address these myths and highlight some best practices for self-advocacy.

#### Responding to Myths About Self-Advocacy in a Postsecondary Setting

Myth #1. It's better to avoid the label "learning disability" because such labels are ultimately damaging to the student's self-esteem.

Few would argue that students benefit from being labeled. However, for college students there are distinct advantages to "owning" the diagnosis of a learning disability. Under Section 504 of the Rehabilitation Act of 1973, college students have rights that are guarantees to any individual with a disability. For example, some students with significant attention difficulties may learn best with minimal outside distraction. So a student with a diagnosed attention deficit disorder (ADD) may need to take an exam in a separate room, free from distracting visual and auditory stimuli, in order to effectively demonstrate what she or he is learning. If students have not faced their learning disability to some degree, they most likely do not know their rights as a disabled person, or what specific accommodations are tailored to their specific needs.

In response to Myth #1, the suggested practices are:

- Know how to describe your learning disability, as well as your specific academic strengths and weaknesses to a variety
  of different audiences.
- Begin to accept the term "learning disability" as a description of difficulties and as an aspect of how
  you learn. Do not let it determine your identity.
- Sample accommodations appropriate to your learning disability based on information in your diagnostic report. Try out different accommodations and then decide which ones work for you.
- Read about other adults with learning disabilities who were successful in college.

Myth #2. Now that there are programs or students with learning disabilities at many postsecondary settings, their existence guarantees that students' essential needs will be met.

Unfortunately, this is not so. Even very comprehensive LD support programs may not emphasize the need of students to advocate for themselves in a college or university setting. While a students' rights to "reasonable accommodations" are protected under the law, the exact nature of the accommodation often rests upon the student's ability to negotiate with a professor. Too often students negotiate away their rights by not knowing their rights before they see a professor. They may assume that they did not need to approach the professor because there is an LD support program on campus. For example, once a student has taken a test without requesting accommodations, there is little that the I.D support services office can do when a student later realizes that more time was needed.

In response to Myth #2, suggested practices are:

- Take responsibility for your learning disability.
- Practice becoming more assertive with professors and support staff.
- Find a relaxed but confident communication style.
- Get to know professors and administrators in your program.

Myth #3. Obtaining the highest grades possible is the major yardstick of effective self-advocacy. Better grades lead to increased options upon leaving a postsecondary setting.

It is true that higher grades will lead to more options for students considering professions that require graduate schooling. However, grades are not the only factors that come into play. Students with learning disabilities will often have to work much harder than their peers to achieve comparable academic outcomes. Unfortunately, higher grades do not mean that one has truly learned to self-advocate. If by the definition of self-advocate we include meeting one's needs beyond the need for high grades (i.e., the need to show how one is learning, to be more self-aware, to become competent, confident, to affiliate with others, to contribute to the well-being of others), this yardstick measure falls short of what college can offer. Examples abound of students with learning disabilities who have mastered getting high grades but are left isolated and miserable in the process, ultimately hurting their development towards healthy, functional independence. If the bottom line is independence in the world of work, it may not be true that the better one's grades, the more successful the worker. Social skills coupled with competence in one's field are the skills necessary to succeed in the workplace.

In response to Myth #3, the suggested practices are:

- Join a support group for students with learning disabilities on your campus, or start one!
- Enjoy relaxing and growth-oriented activities (e.g., sailing with a friend).
- Seek a balance academically and socially
- Get involved in an activity on campus for as much time as you feel you can afford. It's a great way to meet people and develop social skills.
- Ask for help with personal difficulties you may be having by seeing a professional in the counseling center on campus.

Myth #4. When students encounter a very difficult academic situation, it's best to let their parents take over.

This could not be further from the truth! While parents had to be strong advocates in many instances during their son's or daughter's prior school years, in college it is the students' responsibility to act on their own behalf. College affords students the opportunity to learn to problem solve, to draw on their own resources of independence and to seek the assistance of support staff, if needed. For the tudent who may not think they can get what they need, the LD support services office has professionals trained to facilitate a student's self-advocacy needs while respecting their dignity and nseed to make choices. Too many well-meaning parents have "chosen" a major for their son or daughter, directed them as to which support services they need and have told tutors or professors how their

daughter or son should be taught. Further, excessive parent involvement can engender resentment among college professors and support staff, especially those who do not directly work with students with learning disabilities. They may perceive such involvement as overprotective or meddling.

In response to Myth #4, the suggested practices are:

- Parents can join support groups in their area even after their daughter or son has left for college.
- Parents need to let go. They cannot be in charge of the adult life of their son or daughter.
- Realize that the most valuable lesson a student can learn as they are on the threshold of adulthood is learning about the consequences of their actions.
- Above all, a student with a learning disability needs to become comfortable with asking for help from those most able to
  be effective in meeting their needs in a postsecondary setting, whether they be professors, LD service providers, persons
  in career or counseling services, and others.

#### Conclusion

The opportunities for self-advocacy proliferate as students with learning disabilities enter college. Students ought to be encouraged to take part in as many of these opportunities for demonstrating their independence as possible. Learning self-advocacy skills is a "win-win" proposition for college students with learning disabilities.

Parents, professional staff and faculty win when students learn to negotiate effectively to have their needs met. Students with learning disabilities benefit most from developing self-advocacy skills for the realities of a postsecondary setting and the world beyond.

The preciously cited myths about what to do in college as a student with a learning disability highlight some of the pitfalls that need to be avoided. Using these suggestions for self-advocacy with students with learning disabilities will help them to better address the realities of a postsecondary setting.

# SmartStart: Due Process -- Hearings Under Section 504

#### Overview

Although not as commonly used as the IDEA hearing process, hearings are also available under Section 504 to resolve disputes under this law.

## **Key Points**

#### MEDIATION A VOLUNTARY OPTION TO RESOLVE SECTION 504 DISPUTES

Section 504 does not compel districts to mediate Section 504 complaints, although many states
may have mediation procedures for resolving the same types of issues that may be the subjects of
Section 504 complaints. Nothing in the Section 504 regulations or OCR practice prohibits or
compels mediation. This is also the case under Title II of the ADA. See, e.g., Buncombe County
(NC) Sch. Dist., 25 IDELR 536 (OCR 1996) But see also Bercovitch v Baldwin School, 27 IDELR
357 (1st Cir. 1998), (parents whose contract with a private school called for arbitration of all
disputes were required to submit their claims under Section 504 and Title II of the ADA to private
dispute resolution). See also

#### **HEARING REQUESTS BY SCHOOL DISTRICTS**

A district is not required to request an impartial hearing if parents refuse to consent to an initial
evaluation. However, districts may, but are not required to, initiate a due process hearing when a
parent refuses to consent to a student's initial evaluation. OCR Senior Staff Memorandum, 19
IDELR 895 (OCR 1992). On the other hand, OCR takes the position that a school district must
initiate impartial due process if parents refuse to consent to the continuation of services the
district believes the student still needs. Letter to Veir, 20 IDELR 864 (OCR 1993).

## PROCEDURES FOR CONDUCTING IMPARTIAL HEARINGS

- On the subject of procedures for conducting impartial hearings, the Section 504 regulations simply state that parents must be permitted to participate and be represented by counsel. The regulations also say hearings maybe conducted consistently with IDEA requirements. 34 CFR 104.36.
   Fundamentally, states have discretion to establish administrative procedures and rules for the conduct of such hearings. The little guidance that exists about the particulars of conducting impartial hearings stipulates;
  - 1. Compliant due process hearing procedure does not have to allow for cross-examination of witnesses or attendance by court reporter. *Houston (TX) Indep. Sch. Dist.*, 25 IDELR 163 (OCR 1996).
  - 2. While there are no specific regulations for time lines for completion of hearings, OCR adheres to standards of fundamental fairness and reasonableness and looks to IDEA case law and administrative rulings for guidance. *Letter to Anonymous,* 18 IDELR 230 (OCR 1991). See
  - 3. Selection process for impartial hearing officers should ensure that officers have no

professional or personal interest which impedes his or her impartiality. Such a process need not inevitably exclude selection of individuals employed by an educational institution. Officers may be selected on the basis of their expertise in the educational or legal fields. *Pennsylvania Department of Education,* 19 IDELR 1105 (OCR 1993).

#### ORGANIZATION OF THE ADMINISTRATIVE REVIEW PROCESS

One of the four procedural safeguards established under Section 504 is the establishment of a
"review procedure" for appeal of impartial due process hearing decisions. 34 CFR 104.36. Neither
the regulations nor OCR policy guidance provide detail about how the review procedure should
be conducted. Section 504 does not require a two-tier administrative review process. Some
states require administrative reviews to be conducted by administrative officers (Pennsylvania
Department of Education, 19 IDELR 1105 (OCR 1993)), while others have recognized that the
review can take place at the judicial level (Board of Education of the Harrison Central School
District, 25 IDELR 363 (SEA NY 1996)).

#### **AVAILABILITY OF HEARINGS TO ADDRESS RETALIATION CLAIMS**

• There is mixed guidance regarding whether a parent can request an impartial hearing alleging retaliation. The Section 504 regulations establishing procedural safeguards require districts to afford parents an impartial hearing in connection with actions relating to the identification, evaluation or educational placement of students with disabilities. 34 CFR 104.36. If this mandate is interpreted as a limitation of jurisdiction, then a hearing officer whose authority derives from that section of the regulations is not empowered to hear parental claims alleging retaliation. See Sherwood School District, 25 IDELR 1254 (SEA OR 1997) and

On the other hand, one court, reflecting on the actions of hearing officers who heard and ruled upon the parent's retaliation, found this action permissible. *Whitehead v. School Board for Hillsborough County, Florida*, 24 IDELR 21 (M.D. Fla. 1996).

What do the new positive behavior intervention regulations require of school districts?

The new regulations require that every special education student who demonstrates a serious behavior problem receive a functional analysis assessment. The assessment is then used in developing a positive behavior intervention plan for him. The plan becomes part of his IEP. [5 Cal. Code Regs. Sec. 3001(f).] The plan has its own set of goals and objectives related to reducing maladaptive behaviors and substituting appropriate behaviors.

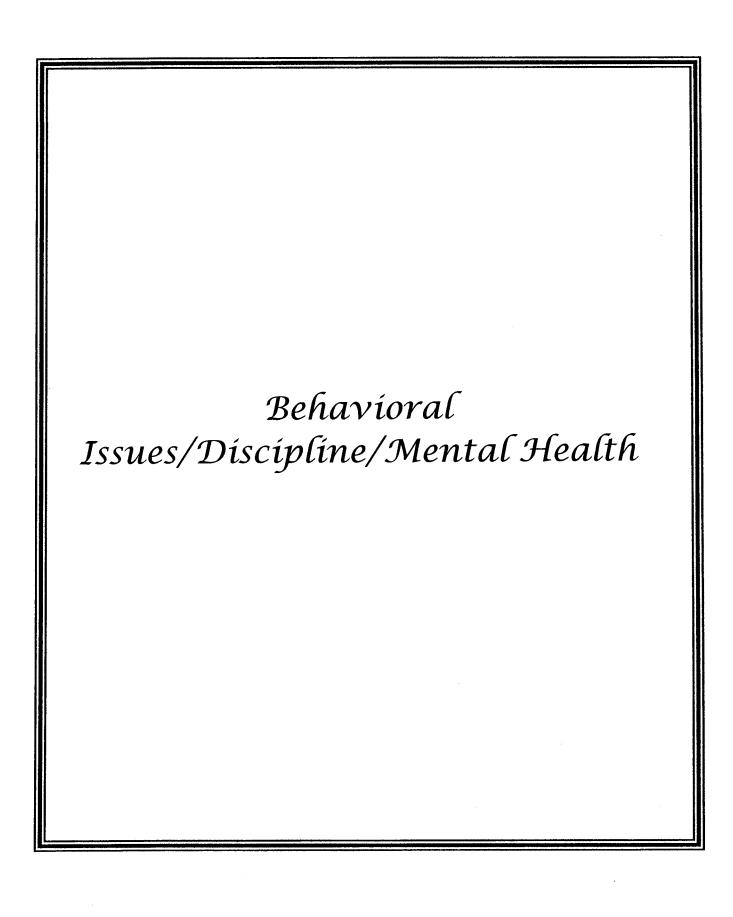
Personnel with training in behavior analysis, with an emphasis on positive behavior intervention, must perform the functional analysis assessment, develop the positive behavior intervention plan, and supervise the implementation of the plan. This individual, called a behavior intervention case manager, becomes a member of the IFP team for every student with serious behavior problems. [5 Cal. Code Regs. Sec. 3052(a)(1).]

The regulations include many other procedures for evaluating the intervention plan, for modifying the plan, and for documenting emergency interventions. You can obtain a copy of the positive behavior intervention regulations by calling a Protection and Advocacy office —1-800-776-5746.

What is a "serious behavior problem" for purposes of qualifying for positive behavior intervention services under the regulations?

A "serious behavior problem" is a behavior problem which: (1) is self-injurious or assaultive or (2) causes serious property damage or (3) is severe, pervasive, and maladaptive, and for which instructional/behavioral approaches specified in the student's IEP are found to be ineffective. [5 Cal. Code Regs. Sec. 3001(y).]

If the child's behaviors are not to the level of a serious behavior problem which would entitle her to a functional analysis assessment, parents should insist that any behavioral interventions used be specified in the IEP. If the milder behavioral problems develop into more severe, pervasive and maladaptive behaviors, but nothing has been specified in the IEP to address them, a child may not technically meet the definition of "serious behavior problem," and a school district may insist on one more opportunity to try to address the otherwise serious behaviors with "instructional/behavioral approaches" rather than a functional analysis.





#### JACK O'CONNELL

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

December 24, 2010

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices, Charter School Administrators, Principals, and Nonpublic School Directors:

# UPDATE: LEAS' RESPONSIBILITIES FOR ENSURING THE CONTINUOUS DELIVERY OF MENTAL HEALTH SERVICES TO STUDENTS WITH DISABILITIES

On December 20, 2010, in the federal class action *A.C.*, et al. v. Schwarzenegger, et al., Case No. 2:10-cv-07956-GW-(AGRx), the Honorable George H. Wu heard plaintiffs' motions for a preliminary injunction and a statewide "stay put" order under 20 *U.S.C.* § 1415j requiring all special education students to remain in their current educational placements.

The court has continued the hearing on plaintiffs' motions until January 24, 2011. In the meantime, in light of the imminent threat by some county departments of mental health (CDMH) to withdraw all educationally-related services as of January 1, 2011, Judge Wu requested the California Department of Education (CDE) to send this memorandum to again remind LEAs of their responsibilities under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400, et seq. and its implementing regulations, and under Government Code § 7570, et seq. (AB 3632), to ensure that educationally-related mental health services and assessments continue without interruption to be provided to all special education students in compliance with all applicable federal timelines. In this regard, the CDE also refers you to prior memoranda on this topic, which are collected at <a href="http://www.cde.ca.gov/sp/se/Ir/ofcImem.asp">http://www.cde.ca.gov/sp/se/Ir/ofcImem.asp</a>.

Under IDEA, 20 *U.S.C.* § 1412(a)(12)(B)(ii), "If a public agency other than an educational agency [such as a CDMH] fails to provide or pay for the special education and related services described in clause (i), the local educational agency...shall provide or pay for such services to the child." Emphasis added.

Similarly, under federal regulations implementing IDEA, 34 *CFR* § 300.154(b)(2), "If a public agency other than an educational agency fails to provide or pay for the special education and related services...the LEA...must provide or pay for these services to the child in a timely manner." Emphasis added.

However, under both the federal statute and regulation, the LEA is entitled to claim reimbursement for the cost of services provided and/or paid for by the LEA from the delinquent public agency, such as the CDMH, which "shall" (20 U.S.C. § 1412 (a)(12)(B)(ii)) or "must" (34 CFR § 300.154(b)(2)) reimburse the LEA.

# LEAs Must Take Immediate and Urgent Action

While it continues to be the CDE's position that the Governor lacked the authority to suspend the AB 3632 mandate, which therefore remains in effect, and to veto the funding, the CDE emphasizes that it is essential that all LEAs take immediate and urgent steps to secure and ensure the continued provision of services for their special education students without interruption. Such steps may include, for example, negotiating an agreement with the CDMH to continue provision of services subject to an agreed allocation of costs, pending resolution of an interagency dispute. (See below.) The CDE understands that 42 school districts and the County of San Diego have now arrived at an agreement to continue to provide mental health services to special education students under AB 3632 through June 30, 2011, through a contract with the County Office of Education. Again, by way of further example, if a student requires assessment, and the CDMH refuses to provide the service, the LEA may contract with an appropriate mental health professional, then seek reimbursement from the CDMH. If the CDMH refuses to sign a contract for the student's residential placement, the LEA may execute the contract, then seek reimbursement from the CDMH.

However, once again, the CDE emphasizes the requirement for LEA's to use all necessary means to ensure the continued and uninterrupted provision of AB 3632 services. Disputes over ultimate financial responsibility must be, and under IDEA and AB 3632 are, secondary to the primary interests of the special education student.

# Use of Interagency Dispute Resolution Process

Government Code § 7585 details the interagency dispute resolution process that a LEA may follow when a CDMH refuses to provide or pay for services. Under § 7585(f), "the pupil affected by the dispute shall be provided with the related service or

designated instruction pending the resolution of the dispute, if the pupil had been receiving the service." Emphasis added. In addition, Title 2, California Code of Regulations (CCR), § 60560, also allows a LEA to file a complaint against a CDMH if the CDMH fails to comply with the assessment and provision of services to a special education student pursuant to AB 3632. This process follows the general Uniform Complaint Procedure (UCP) described in Title 5, CCR, § 4600, et seq.

# Serious Consequences for LEAs' Failure to Comply With Obligations

If a LEA fails to comply with its obligations outlined above, there are potentially very serious consequences. The CDE has significant enforcement authority under both federal and state law. The IDEA is a federal program subject to the requirements of the General Education Provisions Act, 20 *U.S.C.* §1221, et seq. Under § 1232c(b), "to enforce the federal requirements of the program, the State may--(1) withhold approval, in whole or in part, of the application of a local agency for funds under the program until the State is satisfied that such requirements will be met...(2) suspend payments to any December 24, 2010 Page 3 local agency, in whole or in part, under the program if the State has reason to believe that the local agency has failed substantially to comply with any of such requirements...(3) withhold payments, in whole or in part, under any such program if the State finds, after reasonable notice and opportunity for a hearing before an impartial hearing officer, that the local agency has failed substantially to comply with any of such requirements." The withholding of payments under subsection (3) "shall continue until the State is satisfied that there is no longer a failure to comply substantially with any of such requirements."

Under the UCP, Title 5, CCR, § 4650(a)(7)(E), the State may also directly intervene where a complaint alleges a violation by a LEA of IDEA. If, following investigation, the LEA is found by the CDE to be in violation, under § 4670(a) the CDE shall notify the LEA that it must take corrective action. If the LEA fails to comply with the corrective action, the CDE may use any means authorized by law to effect compliance, including "(1) The withholding of all or part of the local agency's relevant state or federal fiscal support in accordance with state or federal statute or regulation."

The CDE is confident that LEAs will comply or continue to comply with their obligations under IDEA and AB 3632, while the courts resolve the issue of the Governor's authority to veto AB 3632 funding. In that regard, the Court of Appeal for the Second Appellate District has set a hearing for February 8, 2011, on the writ petition of the California School Boards Association (CSBA), and Los Angeles and Manhattan Beach Unified School Districts, to overturn the Governor's veto of AB 3632 funding. In addition, on December 21, 2010, CSBA and Clovis USD were granted leave to intervene in the Sacramento Superior Court action by 37 counties, and filled their complaint in intervention on that date, to oppose the counties' request for a declaration suspending the AB 3632 mandate. CSBA and Clovis USD have also filed opposition to the counties' motion for judgment on the pleadings currently scheduled for January 7, 2011. CDE representatives will also continue to meet with legislative staff to determine a resolution to the veto of the state funding for these important services, and we will provide updated information to you as it becomes available.

If you have any general questions regarding this subject while we work toward a more permanent solution, please contact Erika Webb-Hughes, Education Programs Consultant, Special Education Division, at <a href="mailto:ehughes@cde.ca.gov">ehughes@cde.ca.gov</a> or 916-319-0377.

Sincerely,

Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Director's Office at 916-445-4602.

Fred Balcom, Director Special Education Division

Last Reviewed: Tuesday, December 28, 2010

# Mental Health Services FAQ

Frequently asked questions about services previously provided through County Mental Health Agencies for students with Individualized Education Programs

In 1984 Assembly Bill (AB) 3632 statutorily required a partnership between school districts and county mental health agencies to deliver mental health services to students with individualized education programs (IEPs). In 2011, the California Legislature passed Assembly Bill (AB) 114, which repeals the state mandate on special education and county mental health agencies and eliminates related references to mental health services in California statute. As a result of this new legislation, school districts are solely responsible for ensuring that students with disabilities receive special education and related services to meet their needs according to the Individuals with Disabilities Education Act (IDEA) of 2004.

Given this recent change to state laws, the Frequently Asked Questions (FAQs) below are offered to provide students, parents, educators, and other stakeholders with information about services for students with disabilities that were formerly provided by county mental health agencies.

1. My student's current IEP lists mental health services ("AB 3632" services). Do these services end on July 1, 2011?

No. School districts are responsible for ensuring that students continue to receive their services as documented in their IEPs. The provision of any service does not end until an IEP team determines that the student no longer requires the service. The IEP must then be amended with the consent of the parent, guardian, or other holder of the student's educational rights.

2. My student does not currently have mental health services in his/her IEP, but he/she needs such services. What do I do?

According to state and federal laws and regulations, students must be assessed in all areas related to their suspected disabilities. You may therefore request that your school district assess your student to determine the services that your child may require. Be sure to put this request in writing and save a copy. The school district must respond to your request in 15 days. For more information, contact the Special Education Office in your school district.

3. May services be denied, changed, or limited due to changes in funding?

No. Federal law says that districts must provide a free appropriate public education (FAPE) to students with disabilities identified according to the IDEA. The services noted in your student's IEP must be provided without regard to changes in funding.

4. Does the county mental health agency have a role in providing any of the services listed in my student's IEP? What is the role of the school district in determining this role?

The school district is ultimately responsible for ensuring that all students receive the services noted in their IEPs. Some school districts may contract with county mental health agencies for the provision of some services. Districts may also hire their own professionals, contract with organizations or professionals in the community, or use a combination of approaches to ensure services continue.

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If you have a complaint in due process, you should contact the Office of Administrative Hearings (OAH). Please see telephone number and Web site links at the end of this document.

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Contact the special education office of your local school district to discuss the issues. You may also need to convene your student's IEP team and discuss your concerns during an IEP team meeting. If your complaints are not resolved, you may file a request for investigation through the CDE SED Procedural Safeguards Referral Service (PSRS) unit. If you and the school district disagree about the services your student receives, you may also



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7. What if I have a new complaint related to the mental health services that my student receives?

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request mediation or due process hearings through OAH (again, see telephone numbers and Web site links below).

8. My student has been placed in a residential facility. What will happen with this placement in the new fiscal year?

Your student's IEP team should meet to discuss the appropriate placement or changes in placement, if needed.

9. Should mental health services be included in the IEP and not in a separate document?

Yes. As with all services, the services that were formerly provided by county mental health agencies should be included within the IEP.

10. If I disagree with the results of an assessment obtained by my school district, what should I do?

A parent has the right to an independent educational evaluation (IEE) at public expense if the parent disagrees with an evaluation obtained by the school district. If a parent requests an IEE at public expense, the school district must ensure that it is completed without unnecessary delay. The district may also file a due process complaint to request a hearing to determine the appropriateness of the original evaluation.

11. Which offices do I contact for additional assistance and information?

Start by calling your district special education office and your Special Education Local Plan Area (SELPA). You may also contact the following offices:

- CDE SED, PSRS help line and/or mailbox: 800-926-0648; <a href="mailto:speceducation@cde.ca.gov">speceducation@cde.ca.gov</a>
- Office of Administrative Hearings, Special Education Division (Outside Source), phone 916-263-0880

One of the local California Parent Organizations

For additional information as to California special education, please visit our <u>Web site</u>, and follow the links to special education.

Questions: Special Education Division | specedinfoshare@cde.ca.gov | 916-445-4613

California Department of Education 1430 N Street Sacramento, CA 95814

Last Reviewed: Monday, August 01, 2011



9.15.2011

#### Dear Parent/Guardian

Yolo County SELPA is writing to inform you of the recent legal changes as they pertain to mental health as a related service. When mental health/counseling services are considered by the IEP team as necessary for a student to gain educational benefit local County Mental Health has historically been the provider of these services. These services were commonly referred to as "AB 3632" services.

On October 8<sup>th</sup>, 2010 Governor Schwarzenegger signed the State Budget stating the AB 3632 mandate had been suspended. Subsequently, Governor Brown signed the current State Budget, which repealed much of AB 3632. What this means to your student and education is as follows:

- 1. The repeal of AB 3632 shifted all responsibility for mental health as an educationally-necessary related service and residential placements to local education agencies.
- 2. Students who have been determined through the assessment and IEP process as needing mental health as an educationally-necessary related service as part of their Individual Education Plan (IEP), will be provided services through the local education agency by a qualified service provider.
- 3. A systematic transition of service provider from the local County Mental Health Department to local education agencies has begun; service delivery, including frequency and duration of services, will stay at the same level as identified on your child's current IEP.
- 4. If your child currently receives medication management from the local County Mental Health Department, educationally-necessary medication monitoring will continue, but will be provided by a school nurse or other school staff; however, if your child receives non-educationally related medication services through County Mental Health, the district will be contacting you to schedule an IEP.
- County Mental Health will no longer be the primary provider of educationally-necessary mental
  health services. The SELPA will be contracting with another provider for these services to be
  delivered at the local school site level. All services will be provided by a qualified service
  provider.

A seamless transition is anticipated, however, should questions or concerns arise please feel free to contact your local special education director or Yolo County SELPA department at 530.668.3786. If you wish to discuss this transition or other issues relating to your child's IEP at an IEP team meeting, please contact your local special education director.

The SELPA acknowledges your right to make informed decisions regarding your child's educational program. Please be advised that the parents of a child with a disability have certain rights and procedural safeguards. In that regard, please find enclosed a copy of the District's parent rights and procedural safeguards. The agencies that you may contact to obtain assistance in understanding the provisions of this part are as follows:

Yolo County SELPA or California Department of Education 1280 Santa Anita Crt. #150 Post Office Box 944272 Woodland, CA 95776 Sacramento, California 94244-2720

Thank you for your time and attention to these matters. Should you have any questions regarding the contents of this letter, please do not hesitate to contact me.

Cordially,
Camille Giometti-May, Ph.D.
Assistant Superintendent
Yolo County SELPA

{NAME}
Special Education Director
{ADDRESS}

Camille Giometti-May, Ph.D., Assistant Superintendent Yolo County SELPA 1280 Santa Anita Crt., Woodland, CA, Ste. 150, 95775 Office: 530.668.3786 TTY: 530.668.3807

# articipating Members

avis Joint Unified

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o County Office of Education

# DISCIPLINE CHECKLIST

Public Agency:

Reviewed by:

Policy assures that:

Date reviewed: Follow-up:

## LOCATER YES NO

- A. If a change in educational placement for disciplinary removal occurs for a child with a disability, the public agency shall provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. (§ 300.121 (d))
- B. When a child with a disability is removed from his or her current educational placement, a change of placement occurs it
  - a. the removal is for more than 10 consecutive school days; or
  - the series of removals constitute a pattern because they cumulate to more than 10 school days in a school year, because of such factors as length of each removal, total amount of time, or proximity of the removal to one another (§ 300.519).
- D. When the removal of a child with a disability constitutes a change of placement, a review of the placement shall be conducted regarding the relationship between the student's disability and the behavior subject to the disciplinary action (manifestation determination) (§300.523).
- E. If an IEP team determines that the behavior of the student with a disability Was not a manifestation of the disability, disciplinary action applicable to students without disabilities shall be applied (§§300.524300.525) except as provided in §300.121 which requires the provision of FAPE to all students with disabilities who are suspended or expelled (§300.524).
- F. A child who has not been determined eligible for special education and who engages in behavior that violates any rules or code of conduct may assert any of the protections of a child with a disability pursuant to (§300.527).

# LOCATER YES NO

### LOCATER YES NO

# Change of placement for disciplinary removals (§§300.519)

- 5. For a child with a disability, a change in placement occurs if:
  - a. a removal is for more than 10 consecutive school days or
  - b. the child is subject to a series of removals that constitute a pattern because of factors such as length of each removal, total amount of time the child is removed and the proximity of the removals to one another.(§300.519).

# Manifestation determination review §300.523)

- The public agency will conduct a manifestation determination review when the agency is contemplating a change of educational placement for disciplinary reasons.
  - a. When the public agency is contemplating a change of educational placement for disciplinary reasons, the agency will notify the parents of the child no later than the date on which the decision was made to take that action. The agency will provide the parents with an appropriate procedural safeguards notice.
  - No later than 10 days after the date on which the decision to act is made, the manifestation determination review must be conducted.
  - c. In conducting a manifestation determination, the IEP team will consider evaluation and diagnostic results, including information provided by the parents; observations of the child; and the child's IEP and placement.
- 7. The IEP team will only determine the child's behavior was not a manifestation of the disability, if all relevant information indicates that:
  - a. the child's IEP was appropriately developed and implemented and behavior intervention strategies were provided consistent with the child's IEP and placement;
  - the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to the disciplinary action; and
  - the child disability did not impair the ability of the child to control the behavior subject to disciplinary

- b. the parent expressed concern orally if the parent does not know how to read;
- c. the behavior of the child demonstrated the need for the services, in accordance with §300.7;
- the teacher of the child or other personnel has expressed concern about the behavior or performance of the child; or
- e. the parent of the child requested an evaluation
- 15. The public agency is presumed not to have knowledge when the agency either:
  - conducted a full and individual evaluation for special education eligibility and found the child was not a child with a disability; or
  - determined that an evaluation was not necessary and provided appropriate notice to the child's parents of its determination.

# LOCATER YES NO

- 16. If a request for an evaluation is made during the time period in which the child is subjected to disciplinary action under §§300.520 or 300.521:
  - a. the evaluation will be conducted in an expedited manner
  - the child will remain in the placement determined by the school authorities until completion of the evaluation and eligibility determination.

# (APPA-28.DOC)

		STATION DETERMINATION REVIE	
Na	Name of student		<del></del>
1. 8	. SUMMARY OF INFORMATION CO	ONSIDERED	
A.	A. Description of behavior subject	to disciplinary action	
3.	In terms of the behavior described.  1. Evaluation and diagnostice the parents of the student	ped above, document consideration results, including the results or other	of the following: relevant information supplied by
	Observations of the studen	t	

3. Review of student's IEP and placement

#### WHY BEHAVIOR SUPPORT PLANS? WHAT ARE THEY?

- I. Behavioral Support Plans are intervention plans developed to support the student with challenging behaviors
  - A. Behavior Support Plans focus on rewarding appropriate behavior and teach new behavior to replace problem behavior
  - B. They are not designed to tell students what they shouldn't do.
  - C. Must be conducted with the dignity of the person as a primary concern
- II. Students usually cannot change their behavior on their own
  - A. They have learned the behaviors as a coping mechanism and found them to serve a purpose.
  - B. It is our job to determine what purpose the behavior serves (what motivates the behavior, what reinforces the behavior and what is the goal of the behavior) and to alter the environment, the consequences of the behavior and thereby reducing the effectiveness of the behavior.
- III. Students usually cannot change their behavior on their own
  - A. While they have learned inappropriate behaviors, they often have not learned other behaviors that can serve the same purpose.
  - B. The idea that the student is "making poor choices" is often not true if they DON"T KNOW HOW else to respond!!!! They need to be taught new skills to cope.
  - C. It is our job to teach replacement behaviors. Replacement behaviors are to be taught as part of a Behavior Support Plan.
- IV. Functional assessments begin the process of designing a Behavioral Support Plan
  - A. Because they identify and document the problem behaviors (target behaviors), their frequency, intensity. They help discover the motivating goals behind the behavior (the function of the behavior) and what in the environment is reinforcing the behavior.
- V. Identifying the goal (function) of behavior enables the team to design changes that work to meet the student's need (what student is gaining or escaping) that motivates the inappropriate (target) behavior.
  - A. Goals of inappropriate (target) behaviors usually fall into 6 categories:
    - 1. student gains interaction with peers
    - 2. student escapes interaction with peers
    - 3. student gains interaction with an adult
    - 4. student gains an object or is allowed to do some activity
    - 5. student escapes teacher-directed activity
    - 6. student gains sensory stimulation
  - B. It is our job to change the environment, come up with replacement behaviors, and identify rewards that will motivate the student to engage with our plan.
  - C. It is our job to determine what we would like to see the student do instead of the target behavior and teach that skill/behavior.
- VI. Behavior Support Plans focus on changing the environment and how the student relates with the environment
  - A. Changing things in the environment so that the student's need to utilize inappropriate behaviors (target behaviors)
  - B. Changing the adult and peer responses to inappropriate behaviors

### WORKSHEET FOR DEVELOPING A BEHAVIOR PLAN

1.	student's b	m (IEP Tea ehavioral su	m is often a ipport needs	good comb to design:	oination for	a team) to	collaborate	on the
	student, to	gather the n	ecessary inf	ormation, to	o do the dir	ect observa	ations, etc.	uie
	IEAM ME	MBERS:						
	u	·			<del></del>			
	b				V-00-00-00-0			
	d				<del></del>			
isn't pos	are the prob sible to take	l identify ta lem behavio on too man	or(s)? [keep ny behavior	o the numbe s at once]	PECIFICer of behavi	 ors somev	vhat limited	l, it
D.	•							
c.								
WHEN do		avior occur?						
a.				·····				
b.								
	•							
C.	-							
		avior happe					•	
								1.00
b.								
c.								
HOW OFT	EN does th	e behavior l	nappen?		•			
					<del></del>			
b.								
-					_			

3. What finght be the Goal of this benavior? (What is the student be gaining or escapin	g?)
a. student gains interaction with peers	
b. student escapes interaction with peers	
c. student gains interaction with an adult	
d. student gains an object or is allowed to do some activity	
e. student escapes teacher-directed activity	
f. student gains sensory stimulation	
4. What different, more acceptable behavior could meet the same needs?	
a	
b	
c	
a.	
b	
c	
6. What are some strategies that might work?	
ab.	
c.	
7. What are some reinforcers (rewards) that the student values?  a	
b	
c	
e.	

### **Observation Form**

Student:	_ Observer: _	<del></del>	• • •	
Date:	Time:	Activity:		
Context of				
Anteceden	nt:			
Behavior:				
Conseque	nce:			
Comments/(	Other Obse	ervations:		
	on the same			entre es albana la se

#### What are "positive behavior interventions"?

Positive behavior interventions are procedures which, for example, a teacher could use each time a student displays, or is likely to display, a targeted serious behavior problem. Behavior interventions must not simply eliminate serious behavior problems, but must simultaneously teach alternative positive behaviors. [5 Cal. Code Regs. Sec. 3052(a)(2).] In other words, school districts should not use techniques that simply contain or suppress problem behaviors unless they also teach the student substitute appropriate behaviors.

The procedures include, but are not limited to:

- Altering events in anticipation of a serious behavior problem to try to prevent its occurrence;
- (2) Teaching an alternative behavior that produces the same results for the student but is more socially acceptable;
- (3) Teaching adaptive behaviors, that is, methods of coping with unanticipated events; and/or
- (4) Manipulating the consequences for serious behavior problems and appropriate behavior so that appropriate behavior achieves the desired outcome and serious behavior problems are ignored.

[5 Cal. Code Regs. Sec. 3052(d)(2).]

Positive behavior interventions also include procedures for responding to and reinforcing appropriate behaviors. [5 Cal. Code Regs.. Sec. 3052(e).]

#### What behavioral interventions are prohibited?

Behavior interventions cannot involve infliction of pain or trauma, including emotional trauma. [5 Cal. Code Regs. Secs. 3001(d), 3052(a)(5).] More specifically, behavior interventions cannot involve any of the following:

- (1) Release of toxic or unpleasant sprays near the student's face;
- (2) Denial of adequate sleep, food, water, shelter, bedding, comfort, or access to bathroom facilities:
- (3) Subjecting the student to verbal abuse, ridicule or humiliation, or causing emotional trauma;
- (4) Use of locked seclusion;
- (5) Prevention of adequate supervision of the student;
- (6) Depriving the student of one or more of his/her senses

#### What is a Behavior Intervention Plan?

As noted elsewhere, IDEA amendments now require that every student's IEP include statement regarding the child's behavior and whether or not it impedes his/her learning or that of others. If behavior is an impediment to learning, then a behavioral intervention plan addressing the identified behavioral concerns must be developed. Previously, there was no requirement that behavior be addressed in the IEP. California addressed behavior through a Functional Analysis Assessment (FAA) which was brought into play only when behaviors had not been mitigated with less formal responses and the student's behavior problems significantly interfered with the implementation of the goals and objectives of the IEP. The FAA is still available for use by the IEP teams in conjunction with the new requirements of IDEA.)

Some Special Education Local Plan Areas (SELPAs) have begun developing procedures and forms to comply with this change in the law. For example, the Upper Solano SELPA has developed a Behavioral ntervention Continuum, which identifies through the use of five levels, the nature of a response to a behavioral concern. By progressing through the continuum, the responses become more comprehensive and one targeted as more typical classroom management responses are found to be either ineffective or less effective than desired. The continuum plots the purpose of the response, the implementers, the implementation ctivities and the documentation of the response.

ools which were developed to carry out the Behavioral Intervention Continuum include a "School/Classroom ehavioral Report and Intervention Contract" which identifies the problem behavior, consequences of the ehavior, prior interventions used and situations in which the student is successful. Staff, parent and student articipate in determining individual classroom expectations and interventions which will be used including ositive reinforcer. Also available to the IEP team is an "IEP Behavioral Assessment Report and Individualized ehavioral Plan" to be used when progress is insufficient with the use of the "Behavioral Report and tervention Contract" and/or specific behavioral goals and objectives. Throughout this continuum there is an epectation that classroom personnel will utilize accepted best practices in classroom management and positive ehavioral interventions. A list of recommended resources for classroom behavior management are provided as ell.

his approach to complying with the changes in the law regarding behavior and the IEP represents a eventive response with the expectation that intervention will occur at the earliest possible point in the least strictive manner. Positive behavioral intervention with students who have any range of behavioral concerns I result in improved learning environments for all students.

#### The Functional Approach to Behavior Change Function and reinforcement

is the same thing.

Reinforcement is determined by its effect on behavior. The frequency of a response increases when the response is followed by a reinforcing consequence. Reinforcement always increases behavior.

Positive reinforcement occurs when the stimulus is presented following the behavior. Positive reinforcers are attention, tangibles and privileges. The student will work to obtain the reinforcer.

Negative reinforcement occurs when the stimulus is withdrawn following the behavior. Negative reinforcement is the escape or avoidance of unpleasant tasks. The student will work to avoid the reinforcer.

Reinforcement and rewards are not synonymous terms. Rewards do not necessarily increase the frequency of a behavior.

Punishment is also determined by its effect on behavior. The frequency of a response decreases when the response is followed by a punishing consequence. Punishment always decreases behavior.

#### 3 Basic Functions of Behavior

- •Positive reinforcement to obtain attention, privileges and tangibles.
- Negative reinforcement to escape or avoid aversive events.
- •Sensory stimulation to increase or decrease the amount of stimulation.

#### **Compliance Training**

Compliance is a keystone behavior. It is very important to use every opportunity to teach compliance to the students by, 1) giving them an assignment or task, and 2) immediately reinforce the successful completion of the assignment or task. Research shows that the frequent successful completion of high probability (easy) tasks creates a behavioral momentum. Once the ball is rolling, the probability that the student will complete low preference tasks (e.g. school work) will increase significantly.

#### Interventions Based on the Function of the Behavior

The following list of interventions based on the function of the student's behavior is taken from Timothy Vollmer, University of Florida.

Behavior Maintain By Positive Reinforcement

- 1.Extinction. Withhold access of reinforcement when problem behavior occurs.
- 2. Differential Reinforcement of Alternative Behavior (DRA) Present reinforcer when specified alternative behavior occurs.

Behaviors Maintained by Automatic Positive Reinforcement (Self Stimulation)

- Sensory Extinction. Sensory products of the problem behavior are blocked through the use of protective equipment.
- Environmental Enrichment. Preferred stimuli and reinforcers are made available on a free and frequent basis independent from the student's behavior.
- Differential Reinforcement. Present reinforcement when problem behavior does not occur (DRO) or when a specified alternative behavior occurs (DRA).
- 4. Differential Automatic Reinforcement. Provide access to devices that produce sensory stimulation that may compete with the problem behavior.

#### Behavior Maintained by Automatic Negative Reinforcement (Pain Attenuation)

- 1. Medical intervention to alleviate pain/discomfort.
- Differential Reinforcement. Teach student alternative pain attenuating behavior, such as taking aspirin or using lotion.
- 3. Functional Communication Training. Reinforce requests for medical assistance.

Sam is an II year-old child with autism who was unable to concentrate either in the classroom or at home. Violent outbreaks and the inability to communicate effectively characterized her behavior. A network of parents, therapists, teachers, and students gathered around Sam to identify her problem, assess her needs, and develop an effective solution to meet her needs.

The team decided that the Positive Behavioral Intervention and Support process could help Sam. First, Sam's daily life was carefully observed in order to identify a set of triggers that led to Sam's problem behavior. Second and most importantly, a positive behavioral support plan was developed to avoid this behavior and to encourage positive social skills. The plan created a new "environment" that consisted of a varied group of people, an inclusive classroom, a relaxation room, a daily schedule and academic adaptations.

The program led to great improvements in her behavior. The team successfully designed preventative measures, direct instruction methods, self-management skills, and crisis management strategies that helped her transform her negative behaviors into positive social interactions and academic connections. Over time she was able to be less dependent on her aide, attend to tasks, concentrate her attention on the classroom teacher, and be more like her peers.

#### Introduction

Positive Behavioral Interventions and Supports (PBIS) is an application of a behaviorally-based systems approach. It is based on research regarding behavior in the context of the settings where it occurs. Schools, families, and communities work with this approach to design effective environments to improve behavior. Such environmental interventions, in turn, serve to make problem behavior less effective, efficient, and relevant and desired behavior more functional. In addition, the use of culturally appropriate interventions is emphasized.

#### Why this Approach is Important

The use of PBIS emerged 12 years ago as an alternative to more traditional behavior approaches for students with severe disabilities who engaged in self-injury and aggressive behavior. PBIS has since emerged as a tool to be used with all children—with and without disabilities—to achieve long-term positive social behavior. PBIS is a powerful tool that all schools and families can use as they address issues related to troubling behavior and create effective learning environments.

#### **Key Principles of Practice**

 The difference between PBIS and traditional approaches is that PBIS focuses on changing the environment while traditional approaches focus primarily on changing the person. Felix is an inquisitive, resourceful 15-year-old high school student with traumatic brain injury. He has struggled academically and behaviorally for years. In middle school, when presented with a difficult or complex assignment, he would frequently whine, stomp his feet, or hit his teacher or another student. When reprimanded, Felix would often run out of the room and, on several occasions, left the school grounds without permission.

Instead of removing Felix from his neighborhood school, the school personnel conducted a functional behavioral assessment to evaluate the reasons for his problem behavior. The team determined that Felix acted inappropriately when he was frustrated with the academic demands. Therefore, the school revised his academic program to meet his individual needs. This included an adapted curriculum with individual and small group tutoring and a revised behavioral support program. The last two years of middle school were a great success for Felix, his family, and school staff

#### Introduction

Functional Behavioral Assessment (FBA) is an integral component of designing effective behavior support plans. FBA is a systematic process for describing problem behavior, and identifying the environmental factors and surrounding events associated with problem behavior. This information is used to identify and teach more appropriate replacement behaviors and to develop an effective plan for reducing the frequency or severity of the problem behavior.

#### Why This Approach is Important

The Individuals with Disabilities Education Act (IDEA) requires that, at a minimum, the FBA be conducted when disciplinary sanctions result in extended periods (i.e. either before or not later than 10 business days after either the first removal beyond 10 cumulative school days in a school year or commencing a removal that constitutes a change in placement) in which a student is removed from school. In addition to the IDEA requirements, the FBA gives schools valuable information about the possible causes of problem behavior. Research demonstrates that the process of positive behavioral interventions and supports (PBIS) and developing behavioral support plans is more effective when the FBA is conducted prior to developing interventions. The FBA is used to a) define the problem behaviors, b) describe the settings under which problem behaviors are and are not likely to be observed, c) identify the function (the why) of the problem behaviors, and d) collect information from direct observation to support these outcomes.

Several years ago, the main office at Fern Ridge Middle School in Elmira, Oregon processed over 7,000 discipline referrals in a single school year—sometimes more than 100 a week Administrators and teachers realized that their school had become a negative learning environment for both teachers and students. These educators, determined to "save their school," came together to implement a school-lwide system of behavior in order to more proactively manage discipline at their school.

The data on office referrals suggested that the traditional set of consequences currently in use was not bringing about the desired changes in student behavior. To address this problem, the School Climate Committee (SCC) was formed. The committee worked with school staff to draft a set of behavioral expectations across school settings, targeting in particular those identified as most troublesome. This led to the development of a plan to teach students these expectations and the skills needed to meet them.

Once the staff had initiated implementation, the SCC continued to monitor progress. New data suggested additional modifications, such as the need for a new program to teach seventh and eighth graders how to avoid conflict. By the end of the next school year, the SCC reported that office referrals for discipline were down by nearly 75 percent. It was clear that the project was having a positive effect on behavior and learning.

#### Introduction

Schoo-wide Approaches to Behavior are designed to establish high expectations and provide support for socially appropriate behavior. They reinforce positive behavior and establish appropriate consequences for problem behavior. School-wide approaches include school staff, students, and families in the development, discussion, and implementation of rules and consequences. The goal of school-wide approaches is to create and maintain a positive learning environment for all students.

#### Why This Approach is Important

The opportunities for inappropriate behaviors that may result in violence are greater in schools that do not implement school-wide behavior programs. A growing number of schools have found that the most effective way to reduce suspensions, expulsions, office referrals, and other behaviorally related actions is to emphasize a school-wide commitment and approach to behavior. Such approaches focus on using proactive measures to prevent problem behaviors from occurring and effectively and efficiently addressing the minimal problem behaviors that occur.

#### Key Principles of Practice

- Safe schools develop and consistently enforce school-wide rules that are clear, broad-based, and fair.
- Effective school-wide behavior systems are simple, proactive, positives and are applied consistently across all school settings.

#### **USING TIME-OUT**

- 1. Practice time-out with your children before you use it. Find a time when you are all calm and feeling friendly with each other and explain that your are going to use time-out sometimes to HELP your kids with learning good behavior. Show them where time-out will be. Explain how long it will last. Explain it will last longer if they don't cooperate with their time-out Make sure you let the child know that this is to help them get calm and think. It is not a punishment.
- 2. Time-out is not a punishment. It is intended to make a break in the events that are happening that are resulting in negative behavior. It is an opportunity for BOTH the child and the parent to take a rest, cool off, think about what is going on.
- 3. Time-out should never be long, especially for very young children, or very active children. If it is too long, the result is often rebellion, defiance, and resistance to going into time-out. Time-out can usually be a maximum of 5 minutes, and as short as 30 seconds for young and active children.
- 4. Do not overuse time-out or it will lose its power and its message.
- 5. As with any new discipline, children will often test you out in the beginning. With time-out, children often will leave their time-out chair. The parent must be prepared to return the child to the chair consistently, so the child learns the parent will follow through. Resist the temptation to argue, discuss the problems, bargain, etc. while your child is in time-out. Send them, and agree to talk about it after they are done.
- 6. Time-out should be in a location that is safe, and not fun. Because some children are afraid of being isolated or left alone, it is helpful to choose a spot in the middle of things, but boring. Sending a child to their room creates too many temptations, is not easily supervised, and puts a negative feeling to their room. Choose a chair in the corner of the kitchen, or the stairs, etc.
- 7. Time-out is not intended to punish. You can get your point across in many friendly ways. Time-out may use a kitchen timer set to signal how long the child must sit.

#### Steps to Effective Conflict Resolution

- 1. How important is the issue?
- 2. Listen to the other person's side.
- 3. Ask questions of clarification.
- Explore various options. Look for a "win-wiń" solution.
- Agree that the conflict is resolved.

#### **Steps to Effective Conflict Resolution**

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- 6. Don't discuss the conflict with others.

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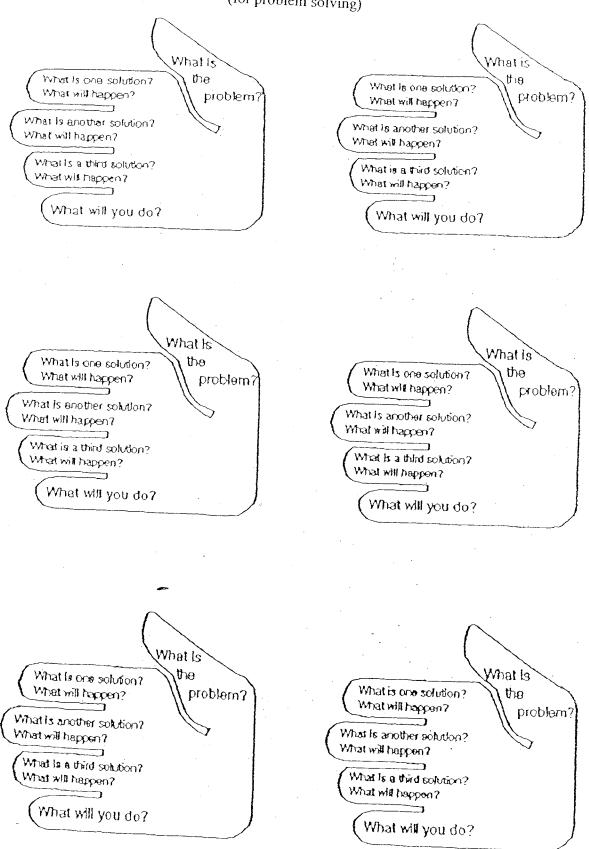
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## The Hand Technique

(for problem solving)



#### **Executive Summary**

Volume III: The Role of Education in a System of Care: Effectively Serving Children with Emotional or Behavioral Disorders

Introduction

<u>Children with Serious Emotional</u> Disturbance

Methodology

Promising Practices That Involve Education in a System of Care

Cross-Site Findings Regarding
Development of Systems of Care

Conclusion

#### INTRODUCTION

Improving outcomes for children with serious emotional disturbance depends not only on improving their school and learning opportunities, but also on promoting effective collaboration across other critical areas of support: families, social services, health, mental health, and juvenile justice. Although bringing about such collaboration poses a major challenge—due to different system priorities, agendas, structures, and ways of operating—the results of collaboration for children with serious emotional disturbance and their families include greater school retention and improved educational, emotional, and behavioral development.

Our study examines the efforts, experiences, and outcomes for three urban sites that have struggled, with some success, to overcome the challenges to creating a comprehensive, schoolbased system of care.

### CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE

Children with serious emotional disturbance may be eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA); however, although mental health researchers estimate that up to 19 percent of the student population exhibit symptoms of serious emotional disturbance, only one percent of students are identified and referred for the necessary support services.

Indeed, national evaluation data from the Center for Mental Health Services (CMHS) reinforce the point that many children and youth with serious emotional disturbance are not receiving special education services.

Students that are identified by schools as having serious emotional disturbance are usually male, over 13, and come from families with an annual income of less than \$12,000. Many come from single-parent homes, and African American children and youth are over-represented among this group. Because these students do not receive a full range of needed services, they typically realize poor school outcomes.

Much more needs to be learned about how to involve schools in a system of care. In December 1997 and February 1998, focus groups comprised of staff from CMHS program grantees defined key questions regarding this issue. Those questions follow:

- . How do you build a real partnership with schools?
- How do you provide prevention services for children and youth who are as yet not identified as having serious emotional disturbance?
- How do you get school personnel to buy into wraparound (system of care) strategies?
- •How do you engage local education agencies in the system of care?
- •How do you build opportunities for parents to work as partners with schools?
- •How do you help school staff feel safe "outside of their usual box"?
- How do you have an impact on school services and programs?
- •How do you integrate "plans" of various agencies and partners?

The issues posed by these questions are relevant in analyzing promising practices employed by select CMHS partnerships.

#### METHODOLOGY

After a careful review of the literature on promising educational practices and on systems of care in education-based settings, three sites were chosen for participation in this monograph. There were several criteria for selection. First, they were chosen from a group of CMHS grantees that were at or near the end of their five-year funding cycle. This allowed us to examine the successes and challenges that the sites faced over time, and to also see how site administrators developed and evolved their programs and agency interactions to address specific issues. Second, they were nominated by individuals knowledgeable about education in all the sites. Third, program data suggested that they were realizing positive outcomes. Other criteria included: operation by the partnership in urban settings; use of local schools and the community as a foundation for services; and the integration of both families and service providers (i.e., education, juvenile justice, social services, health, and mental health) into their partnership. Two researchers visited each site and focus groups, interviews, and observations were conducted with a variety of stakeholders, including program administrators, clinicians, teachers, family members, and children.

The East Baltimore Partnership was developed in 1993 by a coalition of state, city, and local leaders, including representatives from city agencies; state departments; and other private and public entities (e.g., Johns Hopkins University, University of Maryland, Families Involved Together. and Alliance for the Mentally III). The Partnership's core service programs to assist children with serious emotional disturbance and their families include the Family Resources Coordination Unit, an outpatient unit, and the School-Based Program. Four principles guide the work of the Partnership: systems of care should be child and family centered; the needs of the child and family dictate the type and mix of services; systems of care should place decision-making responsibility in the hands of the local community; and services should help families empower themselves to achieve the highest level of participation in community life.

#### Project REACH, Rhode Island

The Resources Effectively Allocated for Children Project (REACH) focuses on children and youth who meet the CMHS standards for severe emotional and behavioral problems and their families, regardless of their eligibility within state guidelines. A set of concrete principles defines how REACH serves those needs. First, the overarching goal of the project is to identify and provide a full continuum of services for children and youth with severe emotional and behavioral problems. Second, the provision of services must be highly flexible, child and family driven, and community based. Third, services should also consist of collaborations among both public and private agencies, and must be planned in a culturally competent manner to maximize access and delivery. REACH is a statewide program, operating in all of Rhode Island's "catchment" areas. each with a Local Coordinating Council (LCC) responsible for implementing the system of care in the communities within that region.

## CROSS-SITE FINDINGS REGARDING DEVELOPMENT OF SYSTEMS OF CARE

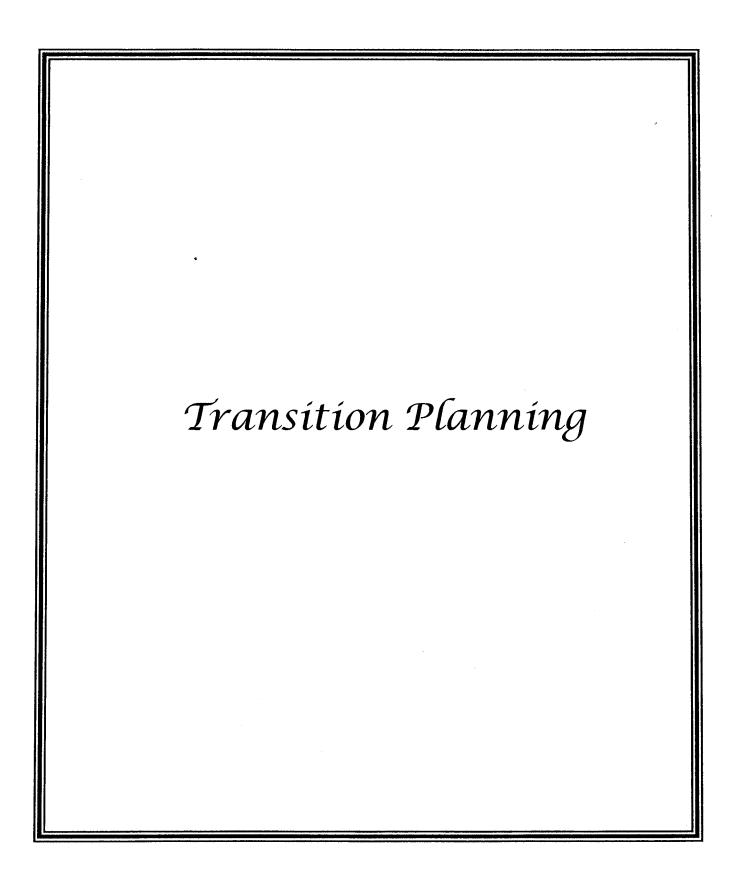
The programs profiled here illustrate both the complexities and rewards of establishing school-based systems of care. Our visits to the partnerships revealed practices that were common to all the partnerships and evident in their success. The six practices that seem most integral to the success of the systems of care follows:

• The use of clinicians or other student support providers in the schools to work with students, their families.

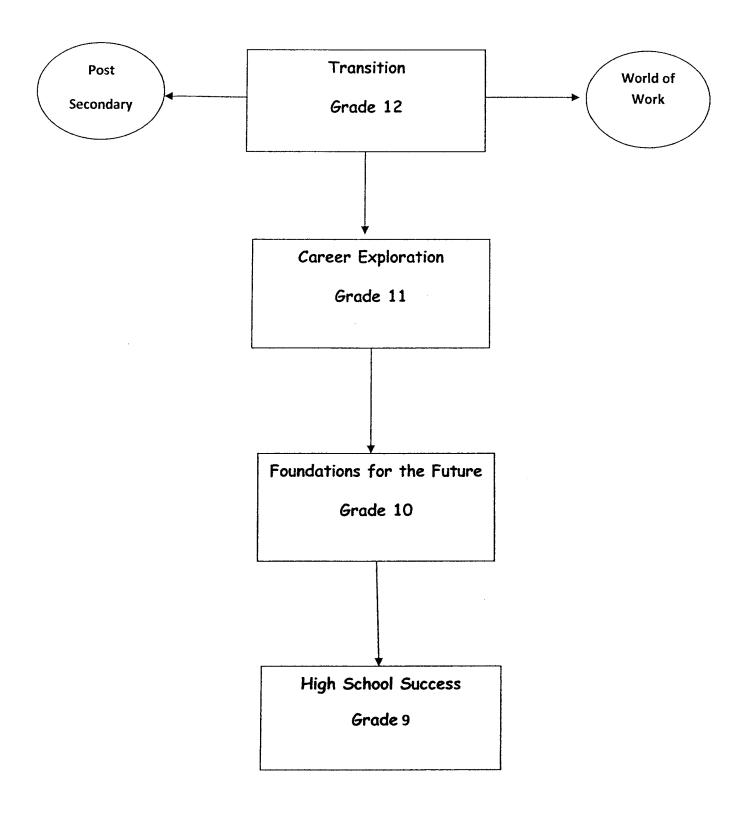
#### It requires:

- Strong capacity in homes, schools, and communities to care for and address the needs of children with serious emotional disturbance and their families;
- Robust and developmentally appropriate learning opportunities, and support for youth to use their skills at home, school, and in the community;
- Creative efforts to embrace as well as address diversity;
- Persistent collaboration with families;
- Child- and family-driven assessments, planning and monitoring of all interventions;
- Ongoing staff development and training that enables individuals to collaborate and to master new ways of doing things; and
- A comprehensive and seamless system of care that provides appropriate, culturally competent child- and family-centered services.

The three sites examined here have started to do these things. In so doing they have produced results that have led to institutionalization at the school level, and to the scaling up of services at the city (Philadelphia) and state (Rhode Island) levels.



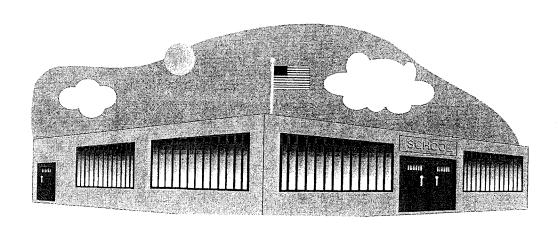
## Transition Sequence



#### **Transition-12 th Grade**

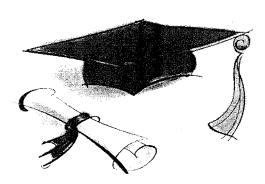
- 1. The student will comprehend legal responsibilities of being an adult.
- 2. The student will prepare a portfolio in preparation for post-secondary activities, to include resume, transcript, letters of recommendation, etc.
- 3. The student will visit post-secondary educational sites or job sites.
- 4. The student will perform job-shadowing in preferred field.
- 5. The student will demonstrate rudimentary understanding of budgeting.

# INDIVIDUAL TRANSITION PLAN (ITP)



The transition from high school to young adulthood is a critical stage for all students; for special education students, this stage requires extra planning and goal setting. Factors to consider include post-secondary education, the development of career and vocational skills, as well as the ability to live independently. The first step in planning for a successful transition is developing the student's transition plan (ITP). A transition plan is <u>required</u> for students enrolled in special education who have an Individualized Education Program (IEP) at age16.

## **What** is a Transition Plan and when should it begin?



A transition plan is the section of the Individualized Education Program (IEP) that outlines transition goals and services for the student. The transition plan is based on a high school student's individual needs, strengths, skills, and interests. Transition planning is used to identify and develop goals which need to be accomplished during the current school year to assist the student in meeting his post-high school goals.

Under the Disabilities Education Act (IDEA 04), a discussion of transition services must take place at the student's annual IEP when he/she is turning 16. The IEP team may begin discussing transition services with the student before he turns 16, if they see fit. If the IEP team hasn't begun to focus on transition planning by the time your child turns 16, it is important for you, as the parent, to initiate that process. Transition services, provided by knowledgeable educators and community resources, should be tailored to a student's goals and strengths and provide him/her with options and plans for his/her future. Transition services offer students hope for the future.

## What are transition services and who participates to implement these services?

At the high school level, transition services for students, who have an IEP, are available through their special education programs and general education programs.

- 1. Special education staff provides assistance with counseling, identifying vocational interests, educational and vocational planning, goal setting, pre-vocational skills training, academic support, and linkages to specific programs and services.
- 2. Other transition-related services that might be available to these students include guidance counseling, career center services, work experience education, academy programs, and career education vocational courses. Check with your child's special education teacher and/or your school district's office of student personnel services to see which specific programs are offered.



All transition planning meetings should include the student, family members, teachers, and other school staff. According to IDEA,

anyone else involved in the student's transition plan should also be invited. This might include representatives from school-to-work transition programs, local social service agencies, counseling programs, medical care providers, and advocates.

Parents are key players in the transition planning process. You know your child better than anyone else and can share plans and ideas you and your child have discussed concerning his/her future. You can help by contributing information about your child's life and experiences outside of school. It's important to include your teenager in these discussions and encourage him to advocate for his own needs and wishes. An individual transition planning questionnaire can help to facilitate this procedure.

A student needs to begin thinking about what he/she wants to do as an adult before their first transition planning meeting takes place. This is his/her chance to take an active role in planning their education and make school relevant to his/her future. This is the time for the student to propose dreams and set goals for reaching them. It is an avenue to prove what they can accomplish, to identify things they enjoy and feel competent in doing, and to set them on a path of choosing. At the same time, they should be realistic about how they'll need to accommodate for his/her learning difficulties while pursuing their education and vocation. The transition plan emphasizes a student's abilities rather than their areas of difficulty.

## Individual Transition Plan (ITP) Questionnaire

At the IEP meeting (Individual Education Plan) the student or parent will be asked about the plans and goals for the years after high school. With the help of a parent, if student is under 18, answer the following questionnaire to help with this process.

#### Questions like:

- · What kind of job or career do I want?
- · What kind of recreation and leisure activities do I want to do?
- · In which community activities do I want to participate?
- · Do I want to continue to live with my family or live on my own?
- Do I want to go to college or vocational school?

#### This form will help to:

- · Guide you in making your plans and goals.
- · Remind you of some choices you have made in the past.
- Give you names of agencies that may help you reach your goals.
- · Help you plan school and community activities that will relate to your future.

On the following pages, you will find an individual transition plan questionnaire to help with making some of these important transition decisions. When filling out the questionnaire, keep in mind <u>who</u> will help with the success of your child's future. Many transition planning activities and objectives are carried out at school. However, unlike traditional IEP objectives, many objectives stated in the transition plan take place outside of school. These objectives could be serviced at home or in the community.

At Home: Giving your teen chores and responsibilities will encourage his independence and responsibility. As you do this, think ahead to the skills he'll need as an independent adult.

In the Community: Look within your own community for opportunities to expose your teenager to future possibilities. Most communities have a variety of resources to assist students with the transition process. For job listings, youth may contact their local youth employment program, summer jobs for youth program, and WorkAbility and/or Transition Partnership programs (TPP) at their school. Local vocational centers offer training in hundreds of occupations. These centers include Regional Occupational Program (ROP), Job Corps, state Conservation Corps (CCC), adult education programs, and community colleges.

# \*\*\*Questionnaire\*\*\*

## Work Experience

The following are some possibilities for you to consider:
My work experience includes
I want a full time job as a
I want a part time job as a

A job coach might be helpful to teach me my assigned duties
I might be interested in a sheltered setting where I could get extra help with developing work skills and learning daily living skills
•••••••••••••••••••••••••••••••••••••••
I won't need a job as soon as I leave high school because I will be a full time student
•••••••••••••••••••••••••••••••••••••••
I haven't made any decisions, but I am working on it
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## Recreation and Leisure

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## Home/Independent Living

My future housing plans after high school
include
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How will I pay for this living arrangement?

- 1. I want to continue to live with my parents or relatives.
- 2. I want to live in my own house or apartment, but will need support from time to time from someone who can help me.
- 3. I am interested in living in an apartment or group home where there is help and supervision.
- 4. I am willing to relocate for a job opportunity.

## Community Participation

I would like to participate in the following community activities:

1.		• •	• •	• •	• •	• •		•		•		•		•	• •		•											•	• •			•	• •	•	• •				
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# Postsecondary Training and Learning

Some educational/training	choices	to	consider:
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- 1. I want to go to college full time at.....
- 2. I want to go to college part time at....
- 3. I want to study to be a.....
- 4. I want to learn a job or trade in/at:

  A Job Corps Center

	A vocational/trade school at
	An apprenticeship program at
	Another program at
5.	The job or trade I want to learn is
6.	I want to take adult education classes.
	The classes I want to take are
	• • • • • • • • • • • • • • • • • • • •

7.	I don'	t plan	to go	to	school	because	I'll
be	workin	ng at a	job.				

8.	I	haven'	t deci-	ded	what I	[ will	do	after
hi	igh	school	, but I	am	worki	ng or	it.	•

My top three career choices are:	
1	• •
2	• •
B	

## <u> Agency Services</u>

I need information on the following agencies:

- -Social Security Administration (SSA)
- -SSI
- -Department of Motor Vehicles (DMV)
- -Driver's license
- -California State ID
- -Alta California Regional Center Client? Yes \_\_\_\_ No \_\_\_
- -Department of Rehabilitation (DR) Client? Yes \_\_\_\_ No \_\_\_
- -Help with job training and placement
- -Help with educational costs
- -Uniform, clothing for a job

## -Tools for the trade I am pursuing

## Other Services to Consider:

Adaptive equipment
Respite Services
Self-protection
Daily Living Skills
Money management
Medical/Health Issues
Transportation
Dating/Family Planning
Counseling
Conservatorship

# THE SELF-ADVOCACY STRATEGY TRANSITION INVENTORY

NAME	
DATE:	UPDATES:
STRENGTHS Independent Living Skills:	Covery 9 F
	Career & Employment Skills:
Financial & Consumer Skills:	Social & Family-Living Skills:
Citizenship & Legal Skills:	Health & Wellness Skills:
ommunity Resources Skills:	Leisure & Recreation Skills:

## TRANSITION INVENTORY (CONTINUED)

GOALS	SKILLS NEEDED FOR SUCCESS	SKILLS TO IMPROVE OR LEARN
INDEPENDENT LIVING		
CAREER & EMPLOYMENT		
- INANCIAL & CONSUMER		
THATYCIAL & CONSUMER		
	-	
OCIAL & FAMILY LIVING		
	· · · · · · · · · · · · · · · · · · ·	

### I HANSITION INVENTORY (CONTINUED)

GOALS	SKILLS NEEDED FOR SUCCESS	SKILLS TO IMPROVE OR LEARN
CITIZENSHIP & LEGAL		
HEALTH & WELLNESS		
COMMUNITY INVOLVEMENT		
·		
LEISURE & RECREATION		
	-	
7 7		

# TRANSITION INVENTORY (CONTINUED)

FURTHER EDUCATION OR TRAINING	
	<i>*</i>
ACCOMMODATIONS	·
	·
POTENTIAL RESOURCES	
GE-OF-MAJORITY RIGHTS	

### INDEPENDENT LIVING SKILLS LIST

### CAN YOU:

- 1. Organize and maintain possessions?
- 2. Bathe and groom self regularly?
- 3. <u>Select clothes</u> (choosing colors, styles, bargains)?
- 4. Interpret weather information and dress accordingly?
- 5. Wash, dry, and iron clothes?
- 6. Plan and cook balanced meals?
- 7. Store food; package and use leftovers?
- 8. Read and follow label directions?
- 9. <u>Use cleaning materials safely?</u>
- 10. Store hazardous materials and medicines?
- 11. Shop for food and living items?
- 12. <u>Operate</u> other <u>household appliances</u> (oven, microwave, dishwasher, vacuum, TV, stereo, VCR, etc.)?
- 13. <u>Clean apartment/house?</u>
- 14. <u>Decorate</u> and <u>maintain</u> an apartment/house?
- 15. <u>Make basic home repairs?</u>
- 16. <u>Arrange</u> for <u>garbage/trash collection</u> and <u>utility services</u> (i.e., water, gas, electricity, telephone)?
- 17. Keep and use a calendar and address book?
- 18. <u>Use a telephone and telephone directory</u> including the yellow pages?
- 19. Ask for and give directions?
- 20. <u>Use public transportation</u> and <u>read schedules</u>?
- 21. Drive a car?
- 22. Maintain a car and fix a flat tire?
- 23. Read a map and interpret road signs?
- 24. Plan and take a trip?
- 25. <u>Develop</u> and <u>maintain an exercise schedule</u>?

This Skills List can be modified based on your students' grade or developmental level.

## FINANCIAL AND CONSUMER SKILLS LIST

### CAN YOU:

- 1. Recognize and name money (coins, bills) by denomination?
- Count money and give correct change?
- 3. Use a calculator?
- 4. Budget money?
- 5. <u>Calculate percentages?</u>
- 6. Use credit cards wisely?
- 7. Read and interpret billing statements?
- 8. Pay bills on time?
- 9. Organize and keep financial records and important receipts?
- 10. <u>Use banking services</u>: checking account, saving account, automatic teller?
- 11. Write and record checks?
- 12. Balance a checkbook?
- 13. Calculate net wages?
- 14. Explain payroll deductions (income tax, social security, retirement, insurance)?
- 15. Complete a loan application?
- 16. Complete a credit card application?
- 17. Read and comprehend a credit agreement?
- 18. Obtain your credit report and clear bad credit?
- 19. Compute interest on loans and credit cards?
- 20. Estimate insurance needs and purchase insurance (e.g., auto, health, home, personal)?
- 21. Organize materials for tax statements and complete income tax report?
- 22. Shop comparatively?
- 23. Read and verify advertisements?
- 24. <u>Calculate savings</u> on sale merchandise?
- 25. Read and comprehend warranties and guarantees?

### CITIZENSHIP AND LEGAL SKILLS LIST

#### CAN YOU:

- Respect and obey laws and the constitution of the United States?
- 2. Respect the rights and property of others?
- 3. Acquire information about important community and national issues?
- 4. Promote the belief in equality of opportunity for all people?
- 5. Respect individual differences and ways of life that are different from your own?
- 6. <u>Use natural resources wisely?</u>
- 7. Take an active part in government (e.g., voting, volunteering, serving on juries)?
- 8. Complete a voter registration application?
- 9. Participate in political parties?
- 10. Explain why citizens are required to pay taxes (e.g., income, excise, customs, property, estate, sales, social security, etc.)?
- 11. Apply for licenses and permits (e.g., drivers, hunting, fishing, marriage, building)?
- 12. File a petition or complaint?
- 13. Take action to peacefully settle conflicts or disagreements?
- 14. Determine when you need a lawyer?
- 15. Select a lawyer based on your legal needs?
- 16. Contact persons or agencies that can assist you with legal problems?
- 17. Interpret contracts and agreements?
- 18. Make informed decisions?
- 19. Name and describe the three branches of government?
- 20. Organize, store, and retrieve important legal documents?
- 21. State your civil and constitutional rights?
- 22. State your rights as mandated under Public Law 101-476?
- 23. <u>State your rights</u> as mandated <u>under section 504</u> of the Vocational <u>Rehabilitation</u> <u>Act of 1973</u>?
- 24. State your rights as mandated under The American Disabilities Act of 1990?
- 25. Advocate for yourself?

This Skills List can be modified based on your students' grade or developmental level.

### **COMMUNITY INVOLVEMENT SKILLS LIST**

### CAN YOU:

- 1. Locate and use the nearest shopping center?
- 2. Locate and use local public and private transportation?
- 3. Locate and use local and state employment services and agencies?
- 4. <u>Locate and use</u> local, state, federal, and professional <u>service organizations</u>?
- 5. Locate and use local or state counseling and guidance services?
- 6. Contact local emergency services (police/fire)?
- 7. Locate and use family and children's services?
- 8. Locate and select child care services?
- 9. Locate and use vocational training institutions and programs?
- 10. Locate and use alcohol and drug abuse service agencies?
- 11. <u>Locate and use</u> local and state <u>agencies for individuals with special designations</u> (e.g., disabilities, members of minority groups, etc.)?
- 12. Locate and use housing agencies?
- 13. Locate and use the emergency room at the nearest hospital?
- 14. Locate and use health services?
- 15. <u>Locate and use the postal services and other delivery services</u> (e.g., UPS, Federal Express)?
- 16. Locate and use the <u>library</u>?
- 17. <u>Locate and use licensing offices</u> (e.g., driver's license, marriage license, car registration)?
- 18. <u>Identify sources of information</u> about <u>community events and activities</u>?
- 19. Follow the law?
- 20. Register and vote?
- 21. Read and/or listen to the news?
- 22. Participate in political functions, if interested?
- 23. Participate in civic clubs and organizations?
- 24. <u>Participate</u> in <u>religious organizations</u>, if interested?
- 25. <u>Volunteer</u> in an area of interest (e.g., Big Brother/Big Sister, coach sports)?

# CAREER AND EMPLOYMENT SKILLS LIST

### CAN YOU:

- Identify your future <u>career</u> or <u>work choices or interests</u>?
- Describe current/future career and employment trends?
- 3. Identify your training needs for reaching your vocational goals?
- 4. <u>Identify and get information from places</u> that provide the type of education or training you desire?
- 5. <u>Identify and get information</u> on <u>vocational training institutions and programs</u>?
- 6. <u>Identify</u> the <u>prerequisites</u> needed to enter the education or training program you desire?
- 7. Describe cost and time for successfully completing a training or degree program
- 8. <u>Identify</u> and <u>contact agencies</u> or resources for financial assistance?
- 9. <u>Identify</u> possibilities for <u>entry level jobs</u> (first part-time job)?
- 10. Successfully complete a job or training application?
- 11. Prepare a resumé?
- 12. <u>Perform well</u> in a job or training interview?
- 13. Present a good work image (e.g., dress appropriately, be neat, keep work area clean)?
- 14. Work independently?
- 15. Get along well with a boss and co-workers?
- 16. Accept criticism?
- 17. Work well with customers?
- 18. Attend work and be on time?
- 19. <u>Be on time</u> for work assignments?
- 20. Organize your work time and materials?
- 21. Consistently complete work at an acceptable rate with few errors?
- 22. Seek extra help if you are having trouble with a job assignment?
- 23. Follow work place policies, directions, and rules?
- 24. Use tools and equipment safely and "troubleshoot" if they are not working?
- 25. Terminate a job appropriately and know what to do if you're laid off?

This Skills List can be modified based on your students' grade or developmental level.

# SOCIAL AND FAMILY-LIVING SKILLS LIST

### CAN YOU:

- 1. Actively listen to others?
- 2. <u>Introduce yourself</u> to strangers?
- 3. Start and hold a conversation with someone?
- 4. Correctly interrupt someone while they are doing something else?
- 5. Make friends?
- 6. Accept and give compliments?
- 7. Accept and give criticism?
- 8. Apologize to someone when you've made a mistake?
- 9. Resist peer pressure?
- 10. Ask others for help and provide help when needed?
- 11. Respect others' beliefs and points of view?
- 12. Effectively work with others to solve a problem?
- 13. Negotiate with someone so both parties win?
- 14. <u>Dress appropriately</u> and <u>use good manners</u>?
- 15. Join an ongoing group activity?
- 16. Plan a social activity or date?
- 17. Respect each other's rights and feelings in a relationship?
- 18. <u>Describe adjustments in life style</u> that are necessary <u>for a successful marriage?</u>
- 19. Describe potential problems that can occur in a marriage?
- 20. Practice precautions related to sexual relationships?
- 21. <u>Describe the major responsibilities</u> in running a home and marriage?
- 22. Take responsibility for raising children?
- 23. Create a <u>supportive home and family</u> environment for children (e.g., emotionally, physically, and financially)?
- 24. Locate and select appropriate child care?
- 25. <u>Practice</u> effective parenting skills?

### **HEALTH AND WELLNESS SKILLS LIST**

### CAN YOU:

- 1. <u>Describe</u> any <u>special medical needs</u> that you have?
- 2. Name your doctor/dentist?
- 3. Select and make regular appointments with your doctor and dentist?
- 4. <u>Identify persons or agencies</u> that can help you with medical and dental health problems?
- 5. Organize and keep health records (e.g., immunization, medical, dental)?
- 6. <u>Identify</u> ways to <u>avoid/prevent health problems</u>, diseases, or injuries?
- 7. Administer basic first-aid?
- 8. Describe what to do in case of emergency?
- Read and follow medicine <u>labels</u> and <u>instructions</u>?
- 10. Store and take medicine properly?
- 11. Engage in regular cardiovascular exercise?
- 12. Engage in regular strength and flexibility exercise?
- 13. Monitor your heart and breathing rate?
- 14. <u>Maintain appropriate weight?</u>
- 15. Select and eat nutritious foods?
- 16. <u>Prepare and store foods</u> correctly to avoid bacteria and illness?
- 17. <u>Avoid exposure to harmful substances</u> including cigarette smoke, pollution, drugs, and alcohol?
- 18. Observe safety precautions (e.g., wearing seat belts, not drinking and driving, wearing appropriate clothing for weather)?
- 19. Plan for relaxation/quiet time for yourself?
- 20. Say "no" if already overburdened?
- 21. <u>Monitor your blood pressure</u> and <u>cholesterol</u> levels?
- 22. Take care of common illnesses: colds, flu?
- 23. Warm-up and cool-down after exercising?
- 24. Practice safe sexual behavior?
- 25. <u>Use relaxation</u> techniques?

This Skills List can be modified based on your students' grade or developmental level.

## **LEISURE AND RECREATION SKILLS LIST**

### CAN YOU:

- 1. Participate in activities that are enjoyable and relaxing?
- 2. Use parks?
- 3. <u>Use sports facilities</u> (e.g., fitness centers, bowling alleys, gyms, golf courses)?
- 4. Use libraries?
- 5. Locate and visit museums and zoos?
- 6. Locate and attend theaters and plays?
- 7. Attend cultural events (e.g., symphony, concerts, fairs)?
- 8. Attend sporting events (e.g., basketball, football, hockey)?
- 9. Participate in sports (e.g., basketball, golf, swimming, ping pong, hiking)?
- 10. <u>Participate in hobbies</u> (e.g., quilting, model building, car restoration, woodworking, painting, reading)?
- 11. Play table games (e.g., cards, checkers, chess, dominoes)?
- 12. Explain game or activity rules?
- 13. Observe sport and recreation safety rules?
  - 14. Join and participate in clubs?
  - 15. Organize sport or recreation teams or clubs?
  - 16. Exhibit good sportsmanship?
- 17. Attend sport and recreational clinics or workshops?
- 18. <u>Coach or manage</u> a team or club?
- 19. Plan and take a trip or vacation?
- 20. Read novels, magazines, and newspapers?

### **ACCOMMODATIONS LIST**

#### DO YOU NEED:

- 1. <u>Transportation</u> and special parking privileges?
- Telecommunications (TTD, TTY)?
- 3. Assistance in obtaining employment?
- 4. <u>Job coaching?</u>
- 5. <u>Mobility training</u> (e.g., for getting to and from job)?
- 6. Aided/augmentative communication devices?
- 7. Daily <u>living attendant?</u>
- 8. <u>Computer</u> with appropriate <u>software</u> (e.g., word processing with spelling and grammar checks)?
- 9. Notetaker or copy of notes for school?
- 10. American Sign Language interpreter?
- 11. Books on tape?
- 12. <u>Simplified directions?</u>
- 13. Enlarged print?
- 14. <u>Curriculum adaptations?</u>
- 15. <u>More time</u> on <u>tests?</u>
- 16. Adjustments in the amount of work required for school assignments?
- 17. Building, house or apartment accessibility?
- 18. Restroom accessibility?
- 19. <u>Assistive sport resources?</u>
- 20. Special diet?
- 21. Special lighting?
- 22. Adaptive or special furniture?
- 23. Special acoustics?
- 24. Special seating arrangement with minimal distractions?
- 25. Special <u>rest periods?</u>

### **POTENTIAL RESOURCES LIST**

### Persons:

School counselor

Teacher

Job developer

Transition specialist

Vocational evaluator

Vocational/career counselor

Person already working in your career

Friends

Parents or relatives

Minister, priest, or rabbi

### Places:

Vocational rehabilitation

Mental health agencies

**Department of Economic Security** 

Social Securities Administration

**Adult Basic Education programs** 

Students Services for Students with Disabilities at

Community Colleges/Universities

**Job Corps** 

**VISTA** 

**YMCA/YWCA** 

Civic Clubs

**Chamber of Commerce** 

**Bureau of Indian Affairs** 

U.S. Immigration and Naturalization Office

**Department of Motor Vehicles** 

Department of Public Transportation

Churches and other religious organizations

Technical training schools

Community colleges

Public and private universities

State employment agencies

**Planned Parenthood** 

Adoption agencies

## Independent Living Postsecondary Goal IEP Team Decision Assistance Form

This form is designed to help the IEP team decide if a student needs a postsecondary goal in the area of independent living. *Independent living includes the skills and knowledge an individual needs to direct his or her life at home and in the community.* Transition assessment information should be taken into account when completing this form and additional assessment may be necessary to adequately identify goal(s).

Review each statement, and consider whether the student possesses the identified skills.

Yes - performs independently and consistently

No - performs inconsistently or not at all; consider an independent living goal

NA – not an area of independence being considered at this time

Home Living	Yes	No	NA
Follows daily living routine (e.g., personal hygiene, dressing, selecting clothes)			
Purchases, prepares and stores food; maintains healthy diet			
Performs light household maintenance (e.g., cleaning, unclogging drains or toilets)			
Appropriately makes and receives telephone calls	<del></del>		*****
Follows disaster safety routines for fire and natural disasters			
Household & Money Management	Yes	No	NA
Creates and maintains checking & savings accounts			
Manages money (e.g., counts money, makes change, budgets, pays taxes, and monthly bills)			
Evaluates cost of services (e.g., banking, telephone, leasing, credit cards, loans)			
Locates & acquires place to live (e.g., finds housing, understands rental agreements)			
Sets up living setting (e.g., organizes furniture, arranges for utilities and services)			
Understands the importance of a good credit rating, how to view and interpret a credit report, and methods to improve credit rating	-		
Transportation	Yes	No	NA
Selects appropriate method of transportation			
Possesses required transportation documentation (e.g., driver's license, bus pass)			
Organizes transportation (e.g., carpool partners, door-to-door bus or cab service)			
Navigates throughout community using preferred mode of transportation			
If driving, knows of automotive maintenance schedules and routines			
Law & Politics	Yes	No	NA
Knows how to participate in voting and political decision-making			
Understands basic local, state, and national laws			
Understands rights as a person with a disability			
Community Involvement	Yes	No	NA
Locates & participates in leisure, recreation, and community activities			
Locates and uses community services (e.g., stores, banks, medical facilities,			
recreation facilities, health department, police department, social services)			
Completes paperwork for medical treatment, community services, insurance, etc.			
Plans and acquires wardrobe (e.g., select appropriate clothes, compare prices)			
Responds appropriately to environmental cues (e.g., signs, sirens)			

Personal Safety and Interpersonal Relationships	res	140	INA
Performs basic first aid and seeks medical assistance when appropriate			
Practices community safety routines (e.g., when to talk to strangers, avoiding			
unsafe locations, locking doors, asking for directions)			
Understands when it is appropriate to call 911			
Knows CPR and when it is necessary			
Maintains relationships with family and friends; establishes new friendships			
Understands the concepts of sexuality (e.g., physical self, reproductive process,			
dating, relationship, marriage).			
Makes informed choices regarding sexual behavior			
Understands basic parenting skills			
Self-Advocacy	Yes	No	NA
Expresses strengths and needs; asks for accommodations when needed			
Expresses preferences appropriately, identifies long- and short-range goals,			
and takes steps to reach goals		<del></del>	
Assertively advocates for self in situations outside of school			
Responds appropriately to typical exchanges with others (e.g., saying hello,			
being bumped or brushed against, making small talk, sarcastic remarks, etc.)			
Resolves conflicts through discussion, reasoning, & compromise			
Resolves commets unough aboutston, reasoning, eo compromise	<del></del>		
Additional Independent Living Skills	Yes	No	NA
•			
If "No" was answered for any of the skills identified above, a postsecondary goal s for the area of independent living. The discussion questions below help further ident goal.	should be ify an ap	e <b>consi</b> e propria	dered te
Independent living goal(s) needed at this time?YesNo			
Is additional assessment information needed in the area of independent living? Why?			
with the second of the second in ICD9			
What are the 3 most important independent living skills to be addressed in IEP?			
1.			
2.			
3.			
How can we work on these particular skills throughout this coming year (i.e., instruction	on, relate	d servi	es,
post-school living objectives, daily living skills, and/or functional vocational evaluatio	n)?		

What annual IEP goal(s) will enable the student to meet the postsecondary independent living goal?

# SAMPLE

Transition Goals Worksheet Use this sheet in conjunction with the model to help you plan and prioritize goals and objectives for students.

Post-school outcome Work; live semi-independently

	70		ğ	Φ	<u> </u>					 	 
Spirit coulce leicons	-Consumer math class focusing around	budgeting, spending money, etc	want to view "Jobs in the community" video series	-Develop a picture checklist for hygiene and clothing; monitor health class	-Role play how to access services in the community	-Develop transportation plan; practice getting around in the community					
General Education	-Take a health class	- Practice self determination skills with	various school staff	- Cooking class with modifications	- Participate in Career Days						
Outside of school	-Practice making	-Check into local park	and rec. programs for leisure activities	-Participate in the "Teen issues" class	sponsored by the health department	-Practice riding RTD -Practice food preparation	-Do laundry at home				
Activities for this year	-Take a consumer math class	-Take a health class	-Explore various		- Begin cooking	-Learn laundry skills					
All activities	-Money management	-Vocational awareness and exploration	-Hygiene practices	-Personal appearance	self determination skills	-Develop extra curricular recreation/leisure activities	-Transportation	- Simple cooking	- Basic housekeeping		

TM Checklist NSTTAC Website

# Annual IEP Goals: Independent Living

EXAMPLES (7.4a - 7.4n, 7.5c & 7.5d)

7.4a: Example for "upon completion of high school, Lissette will learn to utilize public transportation, including the public bus and uptown trolley." (1.4a)

- •G iven travel training situations, Lissette will demonstrate sitting quietly and refraining from talking to strangers while utilizing public transportation at least two times across three opportunities.
  - This annual goal meets I-13 standards for Item #2 for the following reasons:
    - a. The annual goal describes a skill Lissette would need to have in her repertoire of skills in order to travel using public transportation.
    - b. The annual goal is a skill that will be worked on during high school.

### 7.4b: Nonexample:

- •G iven several coins, Lissette will match the coin with its amount six out of eight times by November 3, 2007.
  - This annual goal does not meet I-13 standards for Item #2 for the following reasons:
    - a. According to Lissette's present level of performance, Lissette already knows the value of coins; therefore, it is not necessary to include this as a goal to help her meet her post-secondary goal of using public transportation.

7.4c: Example for "upon completion of high school, Jeremy will independently prepare for work each day, including dressing, making his bed, making his lunch, and accessing transportation." (1.4c)

- •G iven the ingredients for a sandwich and task analysis, Jeremy will follow the steps to make a sandwich with 90% accuracy by June 2007.
  - This annual goal meets I-13 standards for Item #2 for the following reason:
    - a. This annual goal is one of several skills Jeremy will need in order to learn how to prepare a complete meal for his lunch.

### 7.4d: Nonexample:

- •Je remy will participate in field-trips to the grocery store monthly for the duration of this IEP.
  - This annual goal does not meet I-13 standards for item #2 for the following reasons:
    - a. This annual goal is not related to the postsecondary goal of independently preparing for work each day.
    - b. This goal statement does not indicate acquisition of a new skill.
    - c. This goal statement does not include conditions or criteria to be measurable.

7.4e: Example for "upon completion of high school, Paulo will play soccer in a recreational soccer league at the YMCA." (1.4e)

- •G iven the phone number for the YMCA and a YMCA application, Paulo will call to request an application and complete the application by writing his personal information in the spaces provided with 90% accuracy by January 2008.
  - This annual goal meets I-13 standards for Item #2 for the following reasons:
    - a. This annual goal is a step that Paulo will take in achieving his post-secondary goal of playing in a soccer league.
    - b. This annual goal focuses on a skill that will

### be developed during high school.

### 7.4f: Nonexample:

- •G iven written directions, Paulo will put the steps in making a sandwich in the correct order with 95% accuracy by January 2008.
  - This annual goal does not meet I-13 standards for item #2 for the following reason:
    - a. This annual goal is not related to Paulo's post-secondary goal of joining a soccer league.

7.4g: Example for "after graduation Rolanda will live at home and participate to the maximum extent possible in her daily routines (e.g. feeding, dressing, bathing, activating small appliances/media devices, choice making, etc.) and environment through the use of technology." (1.4g)

- •G iven daily classroom routines for practice and a verbal prompt, Rolanda will raise her arms to assist in lifting, dressing, and hand washing on 80% of occasions for the duration of the IEP.
  - This annual goal statement meets I-13
     standards for Item #2 for the following reasons:
    - a. Developing the physical skills necessary to meet this goal will prepare Rolanda for her postsecondary goal of maximum participation in her daily routine.
    - The goal statement provides conditions, criteria, and a timeframe, so that it is measurable.

### 7.4h: Nonexample:

- •Ro landa will receive physical therapy services 3x/ week.
  - This goal statement does not meet I-13 standards for Item #2 for the following reasons:
    - a. The goal statement does not indicate any skills that Rolanda will be gaining.
    - b. This is a related service, not a statement of

### an annual goal.

7.4i & 7.4j: Example for "after graduation, Rolanda will participate in an in-home or center-based program designed to provide habilitative and vocational training with medical and therapeutic supports" (1.2g) and "after graduation Rolanda will participate in community-integrated recreational/leisure activities related to music, movies, and art at movie theaters, concerts at the local community college, art and craft museums downtown, and the entertainment store at the mall." (1.4h) and "after graduation Rolanda will effectively utilize an augmentative communication device at home and in the community that allows familiar and non-familiar individuals to communicate with her regarding needs, wants, and desires." (1.4i)

- •G iven a board displaying four choices of classroom and community topics (e.g., instructional activities, work-based instruction activities, locations in the school, movies, music, locations in the community, people), Rolanda will use a pointer, affixed to a head-piece to select the activity or item in which she wants to engage with 80% accuracy.
  - This example meets I-13 standards for Item #2 for the following reasons:
    - a. Rolanda is not able to use a communication board effectively and learning to do so is a skill that will prepare her to participate in a habilitative and vocational training program after high school.
    - b. Similarly, communicating choices will prepare Rolanda for the goal of participating in leisure activities that interest her.
    - c. Finally, learning to use technology to select from four choices is a step toward preparing Rolanda to communicate more effectively with familiar and non-familiar individuals in various settings.

7.41 & 7.4m: Example for "immediately after graduation, Kevin will participate in habilitative and functional skill

training through CAP services and will attend Compensatory Education classes 2 times per week at the community college" (1.2s) and "within three months of graduation, Kevin will obtain a supported employment position that allows him to work to his maximum stamina and incorporates the use of assistive technology" (1.3s) and "immediately following graduation, Kevin will participate in 1- 2 age-appropriate community and individual community-based activities per week related to horticulture, socialization with young adults, animals, and music" (1.4l) and "after graduation Kevin will effectively utilize an augmentative communication device at home and in the community that allows familiar and non-familiar individuals to communicate with his regarding needs, wants, and desires" (1.4m).

- •G iven the GoTalk20+ augmentative communication device and weekly community practice, Kevin will independently and accurately use the device to communicate single words to communicate a desire for an item in community settings, including restaurants and ticket counters.
  - This example meets I-13 standards for Item #2 for the following reasons:
    - a. Kevin is not able to use a GoTalk20+ effectively and learning to do so is a skill that will prepare him to participate in a habilitative and vocational training program, recreational opportunities, and educational opportunities after high school.
    - b. Learning to use a GoTalk20+ effectively will prepare Kevin to incorporate assistive technology use in future employment
    - c. Similarly, communicating choices will prepare Kevin for the goal of participating in leisure activities that interest him.
    - d. Finally, learning to use the GoTalk20+ is a step toward preparing Kevin to communicate more effectively with familiar and non-familiar individuals in various settings.

7.4n: Nonexample:

- •Kev in will participate in occupational therapy two times each week for 30 minutes each session for the duration of the IEP.
  - This goal statement does not meet I-13 standards for Item #2 for the following reason:
    - Participation in occupational therapy does not indicate what knowledge or skill Kevin is expected to gain during the upcoming year.
    - b. While it is likely that participation in speech therapy logically supports his postsecondary education/training goal, because there is no skill noted, it is unclear that there is a link.

7.4k: Example for "After graduation, Kevin will continue to live with his parents and will participate in his daily care routines to the maximum extent possible." (1.4k)

- •G iven picture symbols with Velcro adhesive and a wall mountable daily planner, Kevin will utilize a schedule to plan self-care (e.g., showering and eating), employment, educational, and recreational activities, five days each week for the duration of the IEP with a maximum of one physical prompt per activity to place the picture symbol on the schedule.
  - This annual goal statement meets I-13 standards for Item #2 for the following reasons:
    - a. Developing the skills to plan necessary to meet this goal will prepare Kevin for his postsecondary goal of maximum participation in his daily routine.
    - The goal statement provides conditions, criteria, and a timeframe, so that it is measurable.

### Nonexample:

- •Kev in will receive occupational therapy services 3x/ week.
  - This goal statement does not meet I-13 standards for Item #2 for the following reasons:
    - a. The goal statement does not indicate any

Independent Living Centers in California



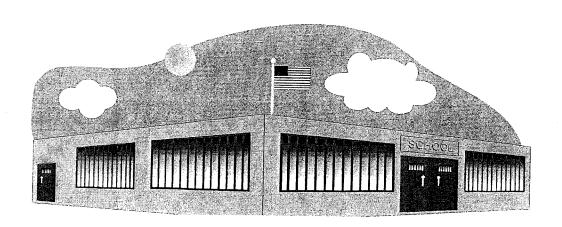


### INDEPENDENT LIVING CENTERS IN CALIFORNIA

CITY	ADDRESS.		( 10 년 년 년 년 년 년 년 년 년 년 년 년 년 년 년 년 년 년
CITY	ADDRESS	PHONE	TTY
Auburn	11768 Atwood Rd., Suite 29	(530) 885-6100	(530) 885-0326
Bakersfield	1631 30th St.	(661) 325-1063	(661) 325-4143
Berkeley	2539 Telegraph Ave.	(510) 841-4776	(510) 848-3101
Central LA	634 S. Spring St., 2nd Floor	(213) 627-0477	(213) 623-9502
Chico	1161 East Ave.	(530) 893-8527	(530) 893-8527
Claremont	109 South Spring St.	(909) 621-6722	(909) 445-0726
Concord	1850 Gateway Blvd., Ste. 120	(925) 363-7293	(925) 363-7293
Downey	7830 Quill Dr., Suite D	(562) 862-6531	(562) 869-0931
East LA	4716 Cesar E Chavez Ave., Bldg.A	(323) 266-0453	(323) 266-1850
Eureka	2822 Harris Street	(707) 445 8404	(707) 445-8405
Fresno	3008 N. Fresno Street	(559) 221-2330	(559) 221-2342
Garden Grove	13272 Garden Grove Blvd.	(714) 621-3300	(714) 663-2087
Hayward	439 A St.	(510) 881-5743	(510) 881-0218
Long Beach	2750 East Spring St., Suite 100	(562) 427-1000	(562) 427-1366
Marin	710 Fourth St.	(415) 459-6245	(415) 459-7027
Modesto	920 12th Street	(209) 521-7260	(209) 521-1425
Nevada City	117 New Mohawk Rd., Suite A	(530) 265-4444	(530) 265-4944
Riverside	6848 Magnolia Ave., Suite 150	(951) 274-0358	(951) 274-0834
Sacramento	420 I St., Suite 3	(916) 446-3074	(916) 446-3074
Salinas	318 Cayuga St., Suite 208	(831) 757-2968	(831) 757-3949
San Bernardino	570 West 4th St., Suite 107	(909) 884-2129	(909) 884-7396
San Diego	8885 Rio San Diego Drive, Ste. 131	(619) 293-3500	(619) 293-7757
San Francisco	649 Mission St., 3rd Floor	(415) 543-6222	(415) 543-6698
San Jose	2202 North First Street	(408) 894-9041	(408) 894-9012
San Mateo	1515 South El Camino Real, Ste. 400	(650) 645-1780	(650) 595-0743
Santa Barbara	423 West Victoria St.	(805) 963-0595	(805) 963-0595
Santa Rosa	980 Hopper Ave.	(707) 528-2745	(707) 528-2151
Van Nuys	14407 Gilmore St., Suite 101	(818) 785-6934	(818) 785-7097
West LA	12901 Venice Blvd.	(310) 390-3611	(310) 398-9204
<u>-</u>			

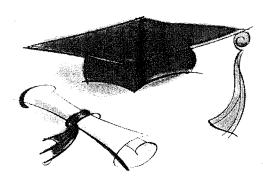
<sup>\*</sup> All Californians can access Independent Living services. If your city is not listed above, please contact the nearest Independent Living Center for satellite offices in your area.

# INDIVIDUAL TRANSITION PLAN (ITP)



The transition from high school to young adulthood is a critical stage for all students; for special education students, this stage requires extra planning and goal setting. Factors to consider include post-secondary education, the development of career and vocational skills, as well as the ability to live independently. The first step in planning for a successful transition is developing the student's transition plan (ITP). A transition plan is <u>required</u> for students enrolled in special education who have an Individualized Education Program (IEP) at age16.

# **What** is a Transition Plan and when should it begin?



A transition plan is the section of the Individualized Education Program (IEP) that outlines transition goals and services for the student. The transition plan is based on a high school student's individual needs, strengths, skills, and interests. Transition planning is used to identify and develop goals which need to be accomplished during the current school year to assist the student in meeting his post-high school goals.

Under the Disabilities Education Act (IDEA 04), a discussion of transition services must take place at the student's annual IEP when he/she is turning 16. The IEP team may begin discussing transition services with the student before he turns 16, if they see fit. If the IEP team hasn't begun to focus on transition planning by the time your child turns 16, it is important for you, as the parent, to initiate that process. Transition services, provided by knowledgeable educators and community resources, should be tailored to a student's goals and strengths and provide him/her with options and plans for his/her future. Transition services offer students hope for the future.

# What are transition services and who participates to implement these services?

At the high school level, transition services for students, who have an IEP, are available through their special education programs and general education programs.

- 1. Special education staff provides assistance with counseling, identifying vocational interests, educational and vocational planning, goal setting, pre-vocational skills training, academic support, and linkages to specific programs and services.
- 2. Other transition-related services that might be available to these students include guidance counseling, career center services, work experience education, academy programs, and career education vocational courses. Check with your child's special education teacher and/or your school district's office of student personnel services to see which specific programs are offered.



All transition planning meetings should include the student, family members, teachers, and other school staff. According to IDEA,

anyone else involved in the student's transition plan should also be invited. This might include representatives from school-to-work transition programs, local social service agencies, counseling programs, medical care providers, and advocates.

Parents are key players in the transition planning process. You know your child better than anyone else and can share plans and ideas you and your child have discussed concerning his/her future. You can help by contributing information about your child's life and experiences outside of school. It's important to include your teenager in these discussions and encourage him to advocate for his own needs and wishes. An individual transition planning questionnaire can help to facilitate this procedure.

A student needs to begin thinking about what he/she wants to do as an adult before their first transition planning meeting takes place. This is his/her chance to take an active role in planning their education and make school relevant to his/her future. This is the time for the student to propose dreams and set goals for reaching them. It is an avenue to prove what they can accomplish, to identify things they enjoy and feel competent in doing, and to set them on a path of choosing. At the same time, they should be realistic about how they'll need to accommodate for his/her learning difficulties while pursuing their education and vocation. The transition plan emphasizes a student's abilities rather than their areas of difficulty.

# Individual Transition Plan (ITP) Questionnaire

At the IEP meeting (Individual Education Plan) the student or parent will be asked about the plans and goals for the years after high school. With the help of a parent, if student is under 18, answer the following questionnaire to help with this process.

### Questions like:

- · What kind of job or career do I want?
- · What kind of recreation and leisure activities do I want to do?
- · In which community activities do I want to participate?
- · Do I want to continue to live with my family or live on my own?
- · Do I want to go to college or vocational school?

### <u>This form will help to:</u>

- · Guide you in making your plans and goals.
- · Remind you of some choices you have made in the past.
- · Give you names of agencies that may help you reach your goals.
- · Help you plan school and community activities that will relate to your future.

On the following pages, you will find an individual transition plan questionnaire to help with making some of these important transition decisions. When filling out the questionnaire, keep in mind <u>who</u> will help with the success of your child's future. Many transition planning activities and objectives are carried out at school. However, unlike traditional IEP objectives, many objectives stated in the transition plan take place outside of school. These objectives could be serviced at home or in the community.

At Home: Giving your teen chores and responsibilities will encourage his independence and responsibility. As you do this, think ahead to the skills he'll need as an independent adult.

In the Community: Look within your own community for opportunities to expose your teenager to future possibilities. Most communities have a variety of resources to assist students with the transition process. For job listings, youth may contact their local youth employment program, summer jobs for youth program, and WorkAbility and/or Transition Partnership programs (TPP) at their school. Local vocational centers offer training in hundreds of occupations. These centers include Regional Occupational Program (ROP), Job Corps, state Conservation Corps (CCC), adult education programs, and community colleges.

# \*\*\*Questionnaire\*\*\*

# Work Experience

The following are some possibilities for you to consider:
My work experience includes
······································
I want a full time job as a
•••••••••••••••••••••••••••••••••••••••
I want a part time job as a

A job coach might be helpful to teach me my assigned duties
I might be interested in a sheltered setting where I could get extra help with developing work skills and learning daily living skills
•••••••••••••••••••••••••••••••••••••••
I won't need a job as soon as I leave high school because I will be a full time student
•••••••••••••••••••••••••••••••••••••••
I haven't made any decisions, but I am working on it
• • • • • • • • • • • • • • • • • • • •

# Recreation and Leisure

My favorite things to	do are:
1	••••••
1	
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# Home/Independent Living

My future housing plans after high school	
nclude	
	• • • • • •

## How will I pay for this living arrangement?

- 1. I want to continue to live with my parents or relatives.
- 2. I want to live in my own house or apartment, but will need support from time to time from someone who can help me.
- 3. I am interested in living in an apartment or group home where there is help and supervision.
- 4. I am willing to relocate for a job opportunity.

# Community Participation

Iw	ould	like t	to pa	rticipa	ite i	n th	e foll	lowir	ıg
con	nmur	nity a	ctivi	ties:					

1.																																							
• • •	•••	••	• • •	• • •	• •	• •	• •	••	•	••	• •	• •	• •		•	• •	•		•		•		•	•	•		•		•	• •					•		•	٠.	
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# <u>Postsecondary Training and Learning</u>

Some educational/training choices to consid	er:
---	-----

- 1. I want to go to college full time at.....
- 2. I want to go to college part time at....
- 3. I want to study to be a.....
- 4. I want to learn a job or trade in/at:

A Job Corps Center

	A vocational/trade school at
	An apprenticeship program at
	Another program at
5.	The job or trade I want to learn is
6.	I want to take adult education classes.
	The classes I want to take are
	••••••••••••••••

- 7. I don't plan to go to school because I'll be working at a job.
- 8. I haven't decided what I will do after high school, but I am working on it.

My top three career choices are:
1
2
3

# THE SELF-ADVOCACY STRATEGY TRANSITION INVENTORY

NAME	
DATE:	UPDATES:
STRENGTHS Independent Living Skills:	Career & Employment Skills:
Financial & Consumer Skills:	Social & Family-Living Skills:
Citizenship & Legal Skills:	Health & Wellness Skills:
ommunity Resources Skills:	Leisure & Recreation Skills:

# TRANSITION INVENTORY (CONTINUED)

GOALS	SKILLS NEEDED FOR SUCCESS	SKILLS TO IMPROVE OR LEARN
INDEPENDENT LIVING		
CAREER & EMPLOYMENT		
- INANCIAL & CONSUMER		
OCIAL & FAMILY LIVING		

# TRANSITION INVENTORY (CONTINUED)

GOALS	SKILLS NEEDED FOR	SKILLS TO IMPROVE OR
	SUCCESS	LEARN
CITIZENSHIP & LEGAL		
		·
HEALTH & WELLNESS		
COMMUNITY INVOLVEMENT		
LEISURE & RECREATION	·	
·		· · · · · · · · · · · · · · · · · · ·
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7		

# TRANSITION INVENTORY (CONTINUED)

FURTHER EDUCATION OR TRAINING	•
	i
ACCOMMODATIONS	
	•
POTENTIAL RESOURCES	
GE-OF-MAJORITY RIGHTS	

# **INDEPENDENT LIVING SKILLS LIST**

### CAN YOU:

- 1. Organize and maintain possessions?
- 2. Bathe and groom self regularly?
- 3. <u>Select clothes</u> (choosing colors, styles, bargains)?
- 4. Interpret weather information and dress accordingly?
- 5. Wash, dry, and iron clothes?
- 6. Plan and cook balanced meals?
- 7. <u>Store food</u>; package and use leftovers?
- 8. Read and follow label directions?
- 9. <u>Use cleaning materials safely?</u>
- 10. Store hazardous materials and medicines?
- 11. Shop for food and living items?
- 12. <u>Operate</u> other <u>household appliances</u> (oven, microwave, dishwasher, vacuum, TV, stereo, VCR, etc.)?
- 13. <u>Clean apartment/house?</u>
- 14. <u>Decorate</u> and <u>maintain</u> an apartment/house?
- 15. <u>Make basic home repairs?</u>
- 16. <u>Arrange</u> for <u>garbage/trash collection</u> and <u>utility services</u> (i.e., water, gas, electricity, telephone)?
- 17. Keep and use a calendar and address book?
- 18. <u>Use a telephone and telephone directory</u> including the yellow pages?
- 19. Ask for and give directions?
- 20. <u>Use public transportation</u> and <u>read schedules</u>?
- 21. Drive a car?
- 22. Maintain a car and fix a flat tire?
- 23. Read a map and interpret road signs?
- 24. Plan and take a trip?
- 25. <u>Develop</u> and <u>maintain an exercise schedule</u>?

This Skills List can be modified based on your students' grade or developmental level.

# FINANCIAL AND CONSUMER SKILLS LIST

### CAN YOU:

- 1. Recognize and name money (coins, bills) by denomination?
- 2. Count money and give correct change?
- 3. Use a calculator?
- 4. Budget money?
- 5. <u>Calculate percentages</u>?
- 6. Use credit cards wisely?
- 7. Read and interpret billing statements?
- 8. Pay bills on time?
- 9. Organize and keep financial records and important receipts?
- 10. <u>Use banking services</u>: checking account, saving account, automatic teller?
- 11. Write and record checks?
- 12. Balance a checkbook?
- 13. Calculate net wages?
- 14. Explain payroll deductions (income tax, social security, retirement, insurance)?
- 15. Complete a loan application?
- 16. Complete a credit card application?
- 17. Read and comprehend a credit agreement?
- 18. Obtain your credit report and clear bad credit?
- 19. Compute interest on loans and credit cards?
- 20. Estimate insurance needs and purchase insurance (e.g., auto, health, home, personal)?

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- 21. Organize materials for tax statements and complete income tax report?
- 22. Shop comparatively?
- 23. Read and verify advertisements?
- 24. <u>Calculate savings</u> on sale merchandise?
- 25. Read and comprehend warranties and guarantees?

# CITIZENSHIP AND LEGAL SKILLS LIST

### **CANYOU:**

- Respect and obey laws and the constitution of the United States?
- 2. Respect the rights and property of others?
- 3. Acquire information about important community and national issues?
- 4. Promote the belief in equality of opportunity for all people?
- 5. Respect individual differences and ways of life that are different from your own?
- 6. Use natural resources wisely?
- 7. Take an active part in government (e.g., voting, volunteering, serving on juries)?
- 8. Complete a voter registration application?
- 9. Participate in political parties?
- 10. Explain why citizens are required to pay taxes (e.g., income, excise, customs, property, estate, sales, social security, etc.)?
- 11. Apply for licenses and permits (e.g., drivers, hunting, fishing, marriage, building)?
- 12. <u>File a petition</u> or complaint?
- 13. Take action to peacefully settle conflicts or disagreements?
- 14. Determine when you need a lawyer?
- 15. Select a lawyer based on your legal needs?
- 16. Contact persons or agencies that can assist you with legal problems?
- 17. <u>Interpret contracts</u> and <u>agreements</u>?
- 18. <u>Make informed decisions?</u>
- 19. Name and describe the three branches of government?
- 20. <u>Organize, store, and retrieve</u> important <u>legal documents</u>?
- 21. State your civil and constitutional rights?
- 22. State your rights as mandated under Public Law 101-476?
- 23. <u>State your rights</u> as mandated <u>under section 504</u> of the Vocational <u>Rehabilitation</u> <u>Act of 1973?</u>
- 24. State your rights as mandated under The American Disabilities Act of 1990?
- 25. Advocate for yourself?

This Skills List can be modified based on your students' grade or developmental level.

# **COMMUNITY INVOLVEMENT SKILLS LIST**

### CAN YOU:

- Locate and use the nearest shopping center?
- 2. Locate and use local public and private transportation?
- 3. Locate and use local and state employment services and agencies?
- 4. Locate and use local, state, federal, and professional service organizations?
- 5. Locate and use local or state counseling and guidance services?
- 6. Contact local emergency services (police/fire)?
- 7. Locate and use family and children's services?
- 8. Locate and select child care services?
- 9. Locate and use vocational training institutions and programs?
- 10. Locate and use alcohol and drug abuse service agencies?
- 11. <u>Locate and use</u> local and state <u>agencies for individuals with special designations</u> (e.g., disabilities, members of minority groups, etc.)?
- 12. Locate and use housing agencies?
- 13. Locate and use the emergency room at the nearest hospital?
- 14. Locate and use health services?
- 15. <u>Locate and use the postal services and other delivery services</u> (e.g., UPS, Federal Express)?
- 16. Locate and use the library?
- 17. <u>Locate and use licensing offices</u> (e.g., driver's license, marriage license, car registration)?
- 18. <u>Identify sources of information</u> about <u>community events and activities</u>?
- 19. Follow the law?
- 20. Register and vote?
- 21. Read and/or listen to the news?
- 22. Participate in political functions, if interested?
- 23. Participate in civic clubs and organizations?
- 24. Participate in religious organizations, if interested?
- 25. <u>Volunteer</u> in an area of interest (e.g., Big Brother/Big Sister, coach sports)?

# CAREER AND EMPLOYMENT SKILLS LIST

### CAN YOU:

- 1. Identify your future career or work choices or interests?
- 2. Describe current/future career and employment trends?
- 3. <u>Identify</u> your <u>training needs</u> for reaching your vocational goals?
- 4. <u>Identify and get information from places</u> that provide the type of education or training you desire?
- 5. Identify and get information on vocational training institutions and programs?
- 6. <u>Identify</u> the <u>prerequisites</u> needed to enter the education or training program you desire?
- 7. <u>Describe cost</u> and <u>time</u> for successfully completing a training or degree program
- 8. <u>Identify</u> and <u>contact agencies</u> or resources for financial assistance?
- 9. <u>Identify</u> possibilities for entry level jobs (first part-time job)?
- 10. Successfully complete a job or training application?
- 11. Prepare a resumé?
- 12. <u>Perform well</u> in a job or training interview?
- 13. Present a good work image (e.g., dress appropriately, be neat, keep work area clean)?
- 14. Work independently?
- 15. Get along well with a boss and co-workers?
- 16. Accept criticism?
- 17. Work well with customers?
- 18. Attend work and be on time?
- 19. Be on time for work assignments?
- 20. Organize your work time and materials?
- 21. Consistently complete work at an acceptable rate with few errors?
- 22. Seek extra help if you are having trouble with a job assignment?
- 23. Follow work place policies, directions, and rules?
- 24. Use tools and equipment safely and "troubleshoot" if they are not working?
- 25. Terminate a job appropriately and know what to do if you're laid off?

This Skills List can be modified based on your students' grade or developmental level.

# SOCIAL AND FAMILY-LIVING SKILLS LIST

### CAN YOU:

- 1. Actively listen to others?
- 2. <u>Introduce yourself</u> to strangers?
- 3. Start and hold a conversation with someone?
- 4. Correctly interrupt someone while they are doing something else?
- 5. Make friends?
- 6. Accept and give compliments?
- 7. Accept and give criticism?
- 8. Apologize to someone when you've made a mistake?
- Resist peer pressure?
- 10. Ask others for help and provide help when needed?
- 11. Respect others' beliefs and points of view?
- 12. Effectively work with others to solve a problem?
- 13. Negotiate with someone so both parties win?
- 14. <u>Dress appropriately</u> and <u>use good manners?</u>
- 15. Join an ongoing group activity?
- 16. Plan a social activity or date?
- 17. Respect each other's rights and feelings in a relationship?
- 18. <u>Describe adjustments in life style</u> that are necessary for a successful marriage?
- 19. Describe potential problems that can occur in a marriage?
- 20. Practice precautions related to sexual relationships?
- 21. Describe the major responsibilities in running a home and marriage?
- 22. Take responsibility for raising children?
- 23. Create a <u>supportive home and family</u> environment for children (e.g., emotionally, physically, and financially)?
- 24. Locate and select appropriate child care?
- 25. <u>Practice</u> effective <u>parenting skills</u>?

# **HEALTH AND WELLNESS SKILLS LIST**

### CAN YOU:

- 1. <u>Describe</u> any <u>special medical needs</u> that you have?
- 2. Name your doctor/dentist?
- 3. <u>Select</u> and <u>make regular appointments</u> with your doctor and dentist?
- 4. <u>Identify persons or agencies</u> that can help you with medical and dental health problems?
- 5. Organize and keep health records (e.g., immunization, medical, dental)?
- 6. <u>Identify</u> ways to avoid/prevent health problems, diseases, or injuries?
- 7. Administer basic first-aid?
- 8. <u>Describe what to do</u> in case of <u>emergency</u>?
- 9. Read and follow medicine labels and instructions?
- 10. Store and take medicine properly?
- 11. Engage in regular cardiovascular exercise?
- 12. Engage in regular strength and flexibility exercise?
- 13. Monitor your heart and breathing rate?
- 14. Maintain appropriate weight?
- 15. Select and eat nutritious foods?
- 16. Prepare and store foods correctly to avoid bacteria and illness?
- 17. <u>Avoid exposure to harmful substances</u> including cigarette smoke, pollution, drugs, and alcohol?
- 18. <u>Observe safety precautions</u> (e.g., wearing seat belts, not drinking and driving, wearing appropriate clothing for weather)?
- 19. Plan for relaxation/quiet time for yourself?
- 20. Say "no" if already overburdened?
- 21. <u>Monitor your blood pressure</u> and <u>cholesterol</u> levels?
- 22. Take care of common illnesses: colds, flu?
- 23. Warm-up and cool-down after exercising?
- 24. Practice safe sexual behavior?
- 25. <u>Use relaxation techniques?</u>

This Skills List can be modified based on your students' grade or developmental level.

# **LEISURE AND RECREATION SKILLS LIST**

### **CAN YOU:**

- 1. Participate in activities that are enjoyable and relaxing?
- 2. Use parks?
- 3. <u>Use sports facilities</u> (e.g., fitness centers, bowling alleys, gyms, golf courses)?
- 4. <u>Use libraries?</u>
- 5. Locate and visit museums and zoos?
- 6. Locate and attend theaters and plays?
- 7. Attend cultural events (e.g., symphony, concerts, fairs)?
- 8. Attend sporting events (e.g., basketball, football, hockey)?
- 9. Participate in sports (e.g., basketball, golf, swimming, ping pong, hiking)?
- 10. <u>Participate in hobbies</u> (e.g., quilting, model building, car restoration, woodworking, painting, reading)?
- 11. Play table games (e.g., cards, checkers, chess, dominoes)?
- 12. Explain game or activity rules?
- 13. Observe sport and recreation safety rules?
  - 14. Join and participate in clubs?
  - 15. Organize sport or recreation teams or clubs?
  - 16. Exhibit good sportsmanship?
  - 17. <u>Attend sport</u> and recreational <u>clinics or workshops</u>?
  - 18. Coach or manage a team or club?
- 19. Plan and take a trip or vacation?
- 20. Read novels, magazines, and newspapers?

# **ACCOMMODATIONS LIST**

### DO YOU NEED:

- 1. <u>Transportation</u> and special parking privileges?
- 2. <u>Telecommunications</u> (TTD, TTY)?
- 3. Assistance in obtaining employment?
- 4. Job coaching?
- 5. <u>Mobility training</u> (e.g., for getting to and from job)?
- 6. Aided/augmentative communication devices?
- 7. Daily living attendant?
- 8. <u>Computer with appropriate software</u> (e.g., word processing with spelling and grammar checks)?
- 9. Notetaker or copy of notes for school?
- 10. American Sign Language interpreter?
- 11. Books on tape?
- 12. Simplified directions?
- 13. Enlarged print?
- 14. Curriculum adaptations?
- 15. <u>More time on tests?</u>
- 16. <u>Adjustments</u> in the amount of <u>work</u> required for school assignments?
- 17. Building, house or apartment accessibility?
- 18. Restroom accessibility?
- 19. <u>Assistive sport resources?</u>
- 20. Special diet?
- 21. Special lighting?
- 22. Adaptive or special furniture?
- 23. <u>Special acoustics?</u>
- 24. Special seating arrangement with minimal distractions?
- 25. Special <u>rest periods?</u>

# POTENTIAL RESOURCES LIST

### Persons:

School counselor

**Teacher** 

Job developer

Transition specialist

Vocational evaluator

Vocational/career counselor

Person already working in your career

Friends

Parents or relatives

Minister, priest, or rabbi

### Places:

Vocational rehabilitation

Mental health agencies

Department of Economic Security

Social Securities Administration

Adult Basic Education programs

Students Services for Students with Disabilities at

Community Colleges/Universities

**Job Corps** 

**VISTA** 

YMCA/YWCA

Civic Clubs

**Chamber of Commerce** 

**Bureau of Indian Affairs** 

U.S. Immigration and Naturalization Office

**Department of Motor Vehicles** 

**Department of Public Transportation** 

Churches and other religious organizations

Technical training schools

Community colleges

Public and private universities

State employment agencies

**Planned Parenthood** 

Adoption agencies

# Independent Living Postsecondary Goal IEP Team Decision Assistance Form

This form is designed to help the IEP team decide if a student needs a postsecondary goal in the area of independent living. *Independent living includes the skills and knowledge an individual needs to direct his or her life at home and in the community.* Transition assessment information should be taken into account when completing this form and additional assessment may be necessary to adequately identify goal(s).

Review each statement, and consider whether the student possesses the identified skills.

Yes - performs independently and consistently

No - performs inconsistently or not at all; consider an independent living goal

NA – not an area of independence being considered at this time

Home Living	Yes	No	NA
Follows daily living routine (e.g., personal hygiene, dressing, selecting clothes)			
Purchases, prepares and stores food; maintains healthy diet			
Performs light household maintenance (e.g., cleaning, unclogging drains or toilets)			
Appropriately makes and receives telephone calls	-		***************************************
Follows disaster safety routines for fire and natural disasters			
Household & Money Management	Yes	No	NA
Creates and maintains checking & savings accounts			
Manages money (e.g., counts money, makes change, budgets, pays taxes, and monthly bills)			
Evaluates cost of services (e.g., banking, telephone, leasing, credit cards, loans)			
Locates & acquires place to live (e.g., finds housing, understands rental agreements)			
Sets up living setting (e.g., organizes furniture, arranges for utilities and services)			
Understands the importance of a good credit rating, how to view and interpret a credit report, and methods to improve credit rating			
Transportation	Yes	No	NA
Selects appropriate method of transportation			
Possesses required transportation documentation (e.g., driver's license, bus pass)			
Organizes transportation (e.g., carpool partners, door-to-door bus or cab service)			
Navigates throughout community using preferred mode of transportation			
If driving, knows of automotive maintenance schedules and routines			
Law & Politics	Yes	No	NA
Knows how to participate in voting and political decision-making			
Understands basic local, state, and national laws			
Understands rights as a person with a disability			
Community Involvement	Yes	No	NA
Locates & participates in leisure, recreation, and community activities			
Locates and uses community services (e.g., stores, banks, medical facilities,			
recreation facilities, health department, police department, social services)			
Completes paperwork for medical treatment, community services, insurance, etc.			
Plans and acquires wardrobe (e.g., select appropriate clothes, compare prices)			
Responds appropriately to environmental cues (e.g., signs, sirens)			

Performs basic first aid and seeks medical assistance when appropriate		No	NA
Practices community safety routines (e.g., when to talk to strangers, avoiding			
unsafe locations, locking doors, asking for directions)			
Understands when it is appropriate to call 911			
Knows CPR and when it is necessary			
Maintains relationships with family and friends; establishes new friendships			
Understands the concepts of sexuality (e.g., physical self, reproductive process,	<del></del>		
dating, relationship, marriage).			
Makes informed choices regarding sexual behavior			
Understands basic parenting skills			
Onderstands dasic parenting skins	. —		
Calf Advancey	Yes	No	NA
Self-Advocacy	res	140	INA
Expresses strengths and needs; asks for accommodations when needed			
Expresses preferences appropriately, identifies long- and short-range goals,			
and takes steps to reach goals			
Assertively advocates for self in situations outside of school			
Responds appropriately to typical exchanges with others (e.g., saying hello,			
being bumped or brushed against, making small talk, sarcastic remarks, etc.)			
Resolves conflicts through discussion, reasoning, & compromise			
Additional Independent Living Skills	Yes	No	NA
	<del></del>		
TOWN IN THE CALL I'M 'I C'C' I I I WAR A W			i ana i
If "No" was answered for any of the skills identified above, a postsecondary goal s			
for the area of independent living. The discussion questions below help further ident	ıry an app	oropria	
		•	.е
goal.		•	.e
		•	.e
Independent living goal(s) needed at this time?YesNo		•	.e
Independent living goal(s) needed at this time?YesNo		·	.e
		·	е
Independent living goal(s) needed at this time?YesNo		•	е
Independent living goal(s) needed at this time?YesNo		•	е
Independent living goal(s) needed at this time?YesNo		·	e
Independent living goal(s) needed at this time?YesNo  Is additional assessment information needed in the area of independent living? Why?		·	e
Independent living goal(s) needed at this time?YesNo  Is additional assessment information needed in the area of independent living? Why?  What are the 3 most important independent living skills to be addressed in IEP?		•	e
Independent living goal(s) needed at this time?YesNo  Is additional assessment information needed in the area of independent living? Why?  What are the 3 most important independent living skills to be addressed in IEP?  1.		•	e
Independent living goal(s) needed at this time?YesNo  Is additional assessment information needed in the area of independent living? Why?  What are the 3 most important independent living skills to be addressed in IEP?  1. 2.		•	e
Independent living goal(s) needed at this time?YesNo  Is additional assessment information needed in the area of independent living? Why?  What are the 3 most important independent living skills to be addressed in IEP?  1. 2. 3.	on voluto		
Independent living goal(s) needed at this time?YesNo  Is additional assessment information needed in the area of independent living? Why?  What are the 3 most important independent living skills to be addressed in IEP?  1. 2. 3.  How can we work on these particular skills throughout this coming year (i.e., instruction)	on, relate		
Independent living goal(s) needed at this time?YesNo  Is additional assessment information needed in the area of independent living? Why?  What are the 3 most important independent living skills to be addressed in IEP?  1. 2. 3.	on, relate n)?		
Independent living goal(s) needed at this time?YesNo  Is additional assessment information needed in the area of independent living? Why?  What are the 3 most important independent living skills to be addressed in IEP?  1. 2. 3.  How can we work on these particular skills throughout this coming year (i.e., instruction)	on, relate n)?		
Independent living goal(s) needed at this time?YesNo  Is additional assessment information needed in the area of independent living? Why?  What are the 3 most important independent living skills to be addressed in IEP?  1. 2. 3.  How can we work on these particular skills throughout this coming year (i.e., instruction)	on, relate n)?		
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Independent living goal(s) needed at this time?YesNo  Is additional assessment information needed in the area of independent living? Why?  What are the 3 most important independent living skills to be addressed in IEP?  1. 2. 3.  How can we work on these particular skills throughout this coming year (i.e., instruction)	n)?	d servic	

SAMPLE

# Transition Goals Worksheet Use this sheet in conjunction with the model to help you plan and prioritize goals and objectives for students.

Post-school outcome Work; live semi-independently

-Take a consumer purchases	All activities	Activities for this year	Outside of school	General Education	Special education
math class  are a health class  -Take a health class  -Take a health class  -Check into local park and rec. programs for leisure activities  -Check into local park and rec. programs for leisure activities  -Check into local park and rec. programs for leisure activities  -Cooking class with modifications  -Practice Self advocacy skills  -Begin cooking  -Learn laundry skills  -Do laundry at home  -Take a health class  -Check into local park and determination skills with and rec. programs for leisure activities  -Cooking class with modifications  -Cooking class with health department career Days  -Practice riding RTD  -Practice food preparation  -Do laundry at home	-Money management	-Take a consumer	-Practice making	-Take a health class	-Consumer math class focusing around
- Take a health class -Take a health class -Take a health class -Take a health class -Check into local park and rec. programs for leisure activities -Explore various -Check into local park adetermination skills with and rec. programs for leisure activities - Practice Self advocacy skills - Begin cooking -Learn laundry skills - Learn laundry skills - Do laundry at home - Take a health class - Check into local park aetermination skills with adetermination skills with and rec. programs for practice school staff determination skills with and rec. programs for practice school staff determination skills with and rec. programs for practice school staff determination skills with and rec. programs for practice school staff determination skills with and rec. programs for practice school staff determination skills with and rec. programs for practice school staff determination skills with and rec. programs for practice school staff determination skills and rec. programs for practice school staff determination skills and rec. programs for practice school staff determination skills and rec. programs for practice school staff determination skills and rec. programs for practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills and rec. practice school staff determination skills		math class	purchases		bidaeting spending money etc
-Take a health class -Check into local park and rec. programs for -Explore various -Explore various -Explore various -Explore various -Explore various -Explore various -Explore various -Explore various -Explore various -Cooking class with -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in the -Participate in -Participat	-Vocational awareness			- Practice self	
-Explore various and rec. programs for various school staff leisure activities careers/vocations careers/vocations - Participate in the "Teen issues" class sponsored by the health department career Days - Practice riding RTD - Practice food preparation - Do laundry at home - Do laundry at home - Explore various career pays - Practice food preparation - Do laundry at home - Do laundry at home - Explore various school staff leisure activities - Cooking class with modifications - Practice riding RTD - Practice food preparation - Do laundry at home - Do	and exploration	-Take a health class	-Check into local park	determination skills with	-Career awareness and exploration, may
-Participate in the modifications - Posticipate in the modifications - Practice Self advocacy skills - Begin cooking - Learn laundry skills - Learn laundry skills - Do laundry at home - Cooking class with modifications - Participate in health department - Parti	-Hygiene practices	-Explore various	and rec. programs for leisure activities	various school staff	want to view "Jobs in the community" video series
- Practice Self advocacy skills sponsored by the health department career Days - Begin cooking - Practice riding RTD - Practice food preparation - Do laundry at home	-Personal appearance	careers/vocations	-Participate in the	- Cooking class with modifications	-Develop a picture checklist for hygiene
-Begin cooking -Practice riding RTD -Practice food preparation -Do laundry at home	-Self advocacy and self determination skills	- Practice Self advocacy skills	"Teen issues" class sponsored by the	- Participate in	and clothing; monitor health class
-Learn laundry skills -Practice food preparation -Do laundry at home	-Relationship issues	- Begin cooking	-Practice riding RTD		roughtay now to access services in the community
-Do laundry at home	Develop extra curricular	-Learn laundry skills	-Practice food		-Develop transportation plan; practice
	recreation/leisure activities		preparation		
Simple cooking  Basic housekeeping	Transportation		-Do laundry at home		
Basic housekeeping	Simple cooking				
	Basic housekeeping			-	

TM Checklist NSTTAC Website

# Annual IEP Goals: Independent Living

EXAMPLES (7.4a - 7.4n, 7.5c & 7.5d)

7.4a: Example for "upon completion of high school, Lissette will learn to utilize public transportation, including the public bus and uptown trolley." (1.4a)

- •G iven travel training situations, Lissette will demonstrate sitting quietly and refraining from talking to strangers while utilizing public transportation at least two times across three opportunities.
  - This annual goal meets I-13 standards for Item #2 for the following reasons:
    - a. The annual goal describes a skill Lissette would need to have in her repertoire of skills in order to travel using public transportation.
    - b. The annual goal is a skill that will be worked on during high school.

# 7.4b: Nonexample:

- •G iven several coins, Lissette will match the coin with its amount six out of eight times by November 3, 2007.
  - This annual goal does not meet I-13 standards for Item #2 for the following reasons:
    - a. According to Lissette's present level of performance, Lissette already knows the value of coins; therefore, it is not necessary to include this as a goal to help her meet her post-secondary goal of using public transportation.

7.4c: Example for "upon completion of high school, Jeremy will independently prepare for work each day, including dressing, making his bed, making his lunch, and accessing transportation." (1.4c)

- •G iven the ingredients for a sandwich and task analysis, Jeremy will follow the steps to make a sandwich with 90% accuracy by June 2007.
  - This annual goal meets I-13 standards for Item #2 for the following reason:
    - a. This annual goal is one of several skills Jeremy will need in order to learn how to prepare a complete meal for his lunch.

## 7.4d: Nonexample:

- •Je remy will participate in field-trips to the grocery store monthly for the duration of this IEP.
  - This annual goal does not meet I-13 standards for item #2 for the following reasons:
    - This annual goal is not related to the postsecondary goal of independently preparing for work each day.
    - b. This goal statement does not indicate acquisition of a new skill.
    - c. This goal statement does not include conditions or criteria to be measurable.

7.4e: Example for "upon completion of high school, Paulo will play soccer in a recreational soccer league at the YMCA." (1.4e)

- •G iven the phone number for the YMCA and a YMCA application, Paulo will call to request an application and complete the application by writing his personal information in the spaces provided with 90% accuracy by January 2008.
  - This annual goal meets I-13 standards for Item #2 for the following reasons:
    - This annual goal is a step that Paulo will take in achieving his post-secondary goal of playing in a soccer league.
    - b. This annual goal focuses on a skill that will

# be developed during high school.

# 7.4f: Nonexample:

- •G iven written directions, Paulo will put the steps in making a sandwich in the correct order with 95% accuracy by January 2008.
  - This annual goal does not meet I-13 standards for item #2 for the following reason:
    - This annual goal is not related to Paulo's post-secondary goal of joining a soccer league.

7.4g: Example for "after graduation Rolanda will live at home and participate to the maximum extent possible in her daily routines (e.g. feeding, dressing, bathing, activating small appliances/media devices, choice making, etc.) and environment through the use of technology." (1.4g)

- •G iven daily classroom routines for practice and a verbal prompt, Rolanda will raise her arms to assist in lifting, dressing, and hand washing on 80% of occasions for the duration of the IEP.
  - This annual goal statement meets I-13
     standards for Item #2 for the following reasons:
    - a. Developing the physical skills necessary to meet this goal will prepare Rolanda for her postsecondary goal of maximum participation in her daily routine.
    - b. The goal statement provides conditions, criteria, and a timeframe, so that it is measurable.

# 7.4h: Nonexample:

- •Ro landa will receive physical therapy services 3x/ week.
  - This goal statement does not meet I-13 standards for Item #2 for the following reasons:
    - a. The goal statement does not indicate any skills that Rolanda will be gaining.
    - b. This is a related service, not a statement of

### an annual goal.

7.4i & 7.4j: Example for "after graduation, Rolanda will participate in an in-home or center-based program designed to provide habilitative and vocational training with medical and therapeutic supports" (1.2g) and "after graduation Rolanda will participate in community-integrated recreational/leisure activities related to music, movies, and art at movie theaters, concerts at the local community college, art and craft museums downtown, and the entertainment store at the mall." (1.4h) and "after graduation Rolanda will effectively utilize an augmentative communication device at home and in the community that allows familiar and non-familiar individuals to communicate with her regarding needs, wants, and desires." (1.4i)

- •G iven a board displaying four choices of classroom and community topics (e.g., instructional activities, work-based instruction activities, locations in the school, movies, music, locations in the community, people), Rolanda will use a pointer, affixed to a head-piece to select the activity or item in which she wants to engage with 80% accuracy.
  - This example meets I-13 standards for Item #2 for the following reasons:
    - a. Rolanda is not able to use a communication board effectively and learning to do so is a skill that will prepare her to participate in a habilitative and vocational training program after high school.
    - b. Similarly, communicating choices will prepare Rolanda for the goal of participating in leisure activities that interest her.
    - c. Finally, learning to use technology to select from four choices is a step toward preparing Rolanda to communicate more effectively with familiar and non-familiar individuals in various settings.

7.41 & 7.4m: Example for "immediately after graduation, Kevin will participate in habilitative and functional skill

training through CAP services and will attend Compensatory Education classes 2 times per week at the community college" (1.2s) and "within three months of graduation, Kevin will obtain a supported employment position that allows him to work to his maximum stamina and incorporates the use of assistive technology" (1.3s) and "immediately following graduation, Kevin will participate in 1- 2 age-appropriate community and individual community-based activities per week related to horticulture, socialization with young adults, animals, and music" (1.4l) and "after graduation Kevin will effectively utilize an augmentative communication device at home and in the community that allows familiar and non-familiar individuals to communicate with his regarding needs, wants, and desires" (1.4m).

- •G iven the GoTalk20+ augmentative communication device and weekly community practice, Kevin will independently and accurately use the device to communicate single words to communicate a desire for an item in community settings, including restaurants and ticket counters.
  - This example meets I-13 standards for Item #2 for the following reasons:
    - a. Kevin is not able to use a GoTalk20+ effectively and learning to do so is a skill that will prepare him to participate in a habilitative and vocational training program, recreational opportunities, and educational opportunities after high school.
    - b. Learning to use a GoTalk20+ effectively will prepare Kevin to incorporate assistive technology use in future employment
    - c. Similarly, communicating choices will prepare Kevin for the goal of participating in leisure activities that interest him.
    - d. Finally, learning to use the GoTalk20+ is a step toward preparing Kevin to communicate more effectively with familiar and non-familiar individuals in various settings.

7.4n: Nonexample:

- •Kev in will participate in occupational therapy two times each week for 30 minutes each session for the duration of the IEP.
  - This goal statement does not meet I-13 standards for Item #2 for the following reason:
    - a. Participation in occupational therapy does not indicate what knowledge or skill Kevin is expected to gain during the upcoming year.
    - b. While it is likely that participation in speech therapy logically supports his postsecondary education/training goal, because there is no skill noted, it is unclear that there is a link.

7.4k: Example for "After graduation, Kevin will continue to live with his parents and will participate in his daily care routines to the maximum extent possible." (1.4k)

- •G iven picture symbols with Velcro adhesive and a wall mountable daily planner, Kevin will utilize a schedule to plan self-care (e.g., showering and eating), employment, educational, and recreational activities, five days each week for the duration of the IEP with a maximum of one physical prompt per activity to place the picture symbol on the schedule.
  - This annual goal statement meets I-13 standards for Item #2 for the following reasons:
    - a. Developing the skills to plan necessary to meet this goal will prepare Kevin for his postsecondary goal of maximum participation in his daily routine.
    - b. The goal statement provides conditions, criteria, and a timeframe, so that it is measurable.

# Nonexample:

- •Kev in will receive occupational therapy services 3x/ week.
  - This goal statement does not meet I-13 standards for Item #2 for the following reasons:
    - a. The goal statement does not indicate any

Independent Living Centers in California





# INDEPENDENT LIVING CENTERS IN CALIFORNIA

CITY	ADDRESS		2 4 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5
Auburn		PHONE CARD	TTY (500) 005 0000
	11768 Atwood Rd., Suite 29	(530) 885-6100	(530) 885-0326
Bakersfield	1631 30th St.	(661) 325-1063	(661) 325-4143
Berkeley	2539 Telegraph Ave.	(510) 841-4776	(510) 848-3101
Central LA	634 S. Spring St., 2nd Floor	(213) 627-0477	(213) 623-9502
Chico	1161 East Ave.	(530) 893-8527	(530) 893-8527
Claremont	109 South Spring St.	(909) 621-6722	(909) 445-0726
Concord	1850 Gateway Blvd., Ste. 120	(925) 363-7293	(925) 363-7293
Downey	7830 Quill Dr., Suite D	(562) 862-6531	(562) 869-0931
East LA	4716 Cesar E Chavez Ave., Bldg.A	(323) 266-0453	(323) 266-1850
Eureka	2822 Harris Street	(707) 445=8404	(707) 445-8405
Fresno	3008 N. Fresno Street	(559) 221-2330	(559) 221-2342
Garden Grove	13272 Garden Grove Blvd.	(714) 621+3300	(714) 663-2087
Hayward	439 A St.	(510) 881-5743	(510) 881-0218
Long Beach	2750 East Spring St., Suite 100	(562) 427-1000	(562) 427-1366
Marin	710 Fourth St.	(415) 459-6245	(415) 459-7027
Modesto	920 12th Street	(209) 521-7260	(209) 521-1425
Nevada City	117 New Mohawk Rd., Suite A	(530) 265-4444	(530) 265-4944
Riverside	6848 Magnolia Ave., Suite 150	(951) 274-0358	(951) 274-0834
Sacramento	420 I St., Suite 3	(916) 446-3074	(916) 446-3074
Salinas	318 Cayuga St., Suite 208	(831) 757-2968	(831) 757-3949
San Bernardino	570 West 4th St., Suite 107	(909) 884-2129	(909) 884-7396
San Diego	8885 Rio San Diego Drive, Ste. 131	(619) 293-3500	(619) 293-7757
San Francisco	649 Mission St., 3rd Floor	(415) 543-6222	(415) 543-6698
San Jose	2202 North First Street	(408) 894-9041	(408) 894-9012
San Mateo	1515 South El Camino Real, Ste. 400	(650) 645-1780	(650) 595-0743
Santa Barbara	423 West Victoria St.	(805) 963-0595	(805) 963-0595
Santa Rosa	980 Hopper Ave.	(707) 528-2745	(707) 528-2151
Van Nuys	14407 Gilmore St., Suite 101	(818) 785-6934	(818) 785-7097
West LA	12901 Venice Blvd.	(310) 390-3611	(310) 398-9204
	<u> </u>		

<sup>\*</sup> All Californians can access Independent Living services. If your city is not listed above, please contact the nearest Independent Living Center for satellite offices in your area.

# Self-Advocacy in Public Schools and Post-Secondary Settings

The meed for self-advocacy skills in public and in post-secondary settings is essential. Students who have relied on the support of their parents and others now must be able to help themselves. This vital "rite of passage' enables the learning disabled individual to prepare for independence and success in the adult world. Self-advocacy for students with learning disabilities can be defined as the ability to recognize and meet the needs specific to one's learning disability without compromising the dignity of oneself or others. Most parents and professionals involved with preparing students with learning disabilities would agree that independent decision-making and the ability to express one's needs are two critical elements of self-advocacy.

Yet, success with making decisions and communicating one's needs can be difficult for students with learning disabilities. Without these skills, however, the transition from elementary, middle school, high school to college for students with learning disabilities may be daunting. In the classroom, for example, students may require additional time on an exam to show what he or she is learning. Further, this additional time can often mean the stark difference between doing well and failing.

Given that self-advocacy is essential for students with learning disabilities to be successful, four myths about what self-advocacy is for these students as well as responses to these myths. They are chosen because of their prevalence among students with learning disabilities and their parents. Further, these myths often have had a decisively negative effect on these students' ability to meet needs critical to their success. The responses presented address these myths and highlight some best practices for self-advocacy.

# Responding to Myths About Self-Advocacy in Public and Post-Secondary Schools

Myth #1. It's better of avoid the label "Learning disability" because such labels are ultimately damaging to thee student's self-esteem.

Few would argue that students benefit from being labeled. However, for students there are distinct advantages to "owning" the diagnosis of a learning disability. Under IDEA and Section 504 of thee Rehabilitation Act of 1973, students have rights that guarantees to any individual with a disability appropriate supports, accommodations, modifications, services and placement. For example, some students with significant attention difficulties may learn best with minimal outside distraction. So a student with a diagnosed attention deficit disorder (ADHD) may need to take an exam in a separate room, free from distracting visual and auditory stimuli, in order fo effectively demonstrate what she or he is leaning. Similarly, students who qualify for special education services have available to them an array of services, supports and placement options, including accommodations and modifications. If the student has not faced their learning disability to some degree, they most likely do not know their rights as a disabled person, or what specific accommodations, modifications, appropriate supports, services and placements options that can be tailored to their specific needs.

# Suggested practices for Myth #1:

- Know how to describe your learning disability as well as your specific academic strengths and weaknesses to a variety of different people.
- Begin to accept the term "learning disability" as a description of difficulties and as an aspect of how you learn. Do not let it determine your identity.
- Sample accommodations appropriate to your learning disability based on information in you diagnostic report. Try out different accommodations and then decide which ones work for you.
- Become engaged in the development of goals and benchmarks for you IEP plan.
- Read about other adults with learning disabilities who are successful.

Myth #2. Now that there are programs or students with Learning disabilities at many schools and post-secondary settings, their existence guarantees that students' essential needs will be met. Unfortunately, this is not so. Even very comprehensive LD support programs and IEP plans may not emphasize the need of students to advocate for themselves in

school. While a students' rights to "to reasonable accommodations" are protected under the law, the exact nature of the accommodations often rests upon the student's ability to negotiate with a school or in a post-secondary setting an individual teacher or professor. Know and understand what is an Individual Education Plan (IEP) what rights you have under an IEP, understand your own IEP document and become familiar to what supports, services and placement options are open to you.

# Suggested practices for myth #2:

- ► Take responsibility for your learning disability.
- Practice becoming more assertive professors and support staff.
- Find a relaxed but confident communication style, or utilize a scripts for meetings.
- Get know your teachers or professors and administrators in your programs.

Myth #3. Obtaining the highest grades possible is the major yardstick of effective self-advocacy. Better grades lead to increased options upon leaving a school setting.

It is true that higher grades will lead to more options for students considering professions that require graduate schooling. However, grades are not the only factors that come into play. Students with learning disabilities will often have to work much harder than their peers to achieve comparable academic outcomes. Unfortunately, higher grades do not mean that one has truly learned to self-advocate. If by the definition of self-advocate we include meeting one's needs beyond the need for high grades (i.e. the need to show how one is learning, to be more self-aware, to become competent, confident, to affiliate with others, to contribute to the well-being of others), this yardstick measure falls short of what school can offer. Examples abound of students with learning disabilities who have mastered getting high grades but are left isolated and miserable in the process, ultimately hurting their development towards healthy, functional independence. If the bottom line is independence in the world of work or school, it may not be true that the better one's grades, the more successful the worker or student. Social skills coupled with competence in one's field are the skills necessary to succeed

in school or in the workplace.

# Suggested practices for Myth #3:

- Join a support group for students with learning disabilities on your campus, or start one!
- Enjoy relaxing and growth-oriented activities (e.g., sailing with a friend, extra curricular activities, sports, or working).
- Seek a balance academically and socially.
- Get involved in an activity on campus for as much time as you feel you can afford. It's a great way to meet people and develop social skills.
- Ask for help with academic and or personal difficulties you may be having by seeing a professional or teacher in the counseling center on campus.

# Myth #4. When students encounter a very difficult academic situation, it's best to let their parents take over.

This could not be further from the truth! While parents had to be strong advocates in many instances during their son's or daughter's prior school years, as students become older their should be a join responsibility of advocacy. When the student whether secondary or post-secondary, it is the students' responsibility to act on their own behalf. Secondary and post-secondary school affords students the opportunity to learn to problem solve, to draw on their won resources of independence and to seek the assistance of support staff or parents, if needed. For the student who may not think they can get what they need, the LD support services or counseling office has teachers and professionals trained to facilitate a student's self-advocacy needs while respecting their dignity and need to make choices. Too many well-meaning parents have "chosen" a course of study for their son or daughter, directed them as to which support services they need and have told teachers or professors how their daughter or son should be taught. Further, excessive parent involvement can engender resentment among teachers and support staff, especially those who do not directly work with students with learning disabilities. They may perceive such involvement as overprotective or meddling.

# Suggested practices for Myth #4:

- Parents can join support groups in their area even after their daughter or son has left for college.
- Parents need to let go. They cannot be in charge of the adult life of their son or daughter.
- Realize that the most valuable lesson a student can learn as they are on the threshold of adulthood is learning about the consequences of their actions.
- Above all, a student with a learning disability needs to become comfortable with asking for help from those most able to be effictive in meeting their needs in a school setting especially in post-secondary education, whether they be teachers or professors, LD services providers, persons in career or counseling centers, and others.

# Conclusion

The opportunities for self-advocacy proliferate as students with learning disabilities enter secondary and post-secondary school. Students ought to be encouraged to take part in as many of these opportunities for demonstrating their independence as possible. Learning self-advocacy skills is a "win-win" proposition for students with learning disabilities.

Parents, teachers, professors win when students learn to negotiate effectively to have their needs met. Students with learning disabilities benefit most from developing self-advocacy skills for the realities of the school setting and the world beyond.

The myths cited about what a student with a learning disability highlight some of the pitfalls that need to be avoided. Using these suggestions for self-advocacy with students with learning disabilities will help them to better address the realities of secondary and post-secondary school settings.

# **Questions and Answers** on Secondary Transition

### Revised June 2009

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the <u>Federal Register</u> on August 14, 2006, and became effective on October 13, 2006. Additional regulations were published on December 1, 2008 and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, advocacy organizations, and other interested parties with information regarding secondary transition for students with disabilities. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

The IDEA and its implementing regulations continue to address transition services for children with disabilities. Transition services may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. See 34 CFR §300.43(b). The term "transition services" means a coordinated set of activities for a child with a disability that: (a) is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation; (b) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and (c) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. See 20 U.S.C. 1401(34) and 34 CFR §300.43(a).

Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of the IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing

regulations, and other important documents related to the IDEA and the regulations are found at <a href="http://idea.ed.gov">http://idea.ed.gov</a>.

If you are interested in commenting on this guidance, please email your comments to <a href="mailto:OSERSguidancecomments@ed.gov">OSERSguidancecomments@ed.gov</a> and include Secondary Transition in the subject of your email or write us at the following address: Patricia Guard, U.S. Department of Education, Potomac Center Plaza, 550 12<sup>th</sup> Street, SW, room 4108, Washington, DC 20202.

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### A. Federal Activities

Authority:

The requirements for transition services are found in the regulations

at 34 CFR §§300.43 and 300.320(b).

**Question A-1:** 

Are there activities at the Federal level to support secondary transition

services?

Answer:

Yes. There are State Performance Plan/Annual Performance Report (SPP/APR) indicators that address secondary transition. In the SPP/APR, a State is required to set measurable and rigorous targets and annually report data on: graduation rates; competitive employment rates; postsecondary school enrollment rates; and percent of eligible IEPs that contain the required secondary transition elements. The Office of Special Education Programs (OSEP) funds three centers to provide technical assistance for the collection and analysis of data for these indicators: the National Secondary Transition Technical Assistance Center (NSTTAC); the National Dropout Prevention Center for Students with Disabilities (NDPC-SD); and the National Post-School Outcomes Center (NPSO). Additionally, OSEP is involved in collaborative activities with other Federal agencies with a focus on improving the academic and functional achievement of students with disabilities. These collaborative activities include the Matrix-Mapping Federal Resources for Technical Assistance and Information Services; the Interagency Committee on Disability Research/Interagency Subcommittee on Employment; the Federal Partners in Transition Workgroup; and the Youth Vision Federal Collaborative Partnership. The agencies involved in these and other activities include the Departments of Education, Labor, Health and Human Services, Transportation, Justice, Housing and Urban Development, and the Equal Employment Opportunity Commission.

# B. Summary of Performance (SOP)

**Authority:** 

The requirements for the SOP are found in the regulations at 34 CFR

§300.305(e)(3).

**Question B-1:** 

What is the purpose of the SOP, "a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's

postsecondary goals"?

Answer:

The purpose of the SOP is to provide the child with a summary of the child's academic achievement and functional performance in order to

assist the child to transition beyond high school.

**Question B-2:** 

What information is required and what information would be helpful to

include in the SOP?

as a GED credential.

Answer:

The SOP must include recommendations on how to assist the child in meeting his or her postsecondary goals. The IDEA does not otherwise specify the information that must be included in the SOP; rather, State and local officials have the flexibility to determine the appropriate content to be included in a child's SOP, based on the child's individual needs and postsecondary goals.

**Question B-3:** 

Does a general educational development credential (GED) or alternate

diploma trigger the creation of an SOP?

Answer:

No. A public agency, pursuant to 34 CFR §300.305(e)(3), must provide a child whose eligibility for services under Part B of the IDEA terminates due to graduation from secondary school with a regular diploma, or due to exceeding the age of eligibility for a free appropriate public education (FAPE) under State law, with a summary of the child's academic achievement and functional performance. This Part B requirement does not apply to the group of children who leave secondary school with a GED credential or alternate diploma and whose eligibility for services under Part B has not terminated. See 34 CFR §300.102(a)(3)(iv), which clarifies that a regular high school diploma does not include alternate degrees, such

Public agencies are not required to provide an SOP for students who leave secondary school with a GED credential or alternate diploma; however, there is nothing in the IDEA or the Part B regulations that would prevent a

State from doing so. If a State establishes a policy or practice requiring LEAs to provide an SOP to students with disabilities who leave high school with a GED credential or an alternate diploma, we recommend that, to avoid any confusion, the LEA notify the student and his or her parents that the student's eligibility for FAPE under Part B does not terminate until the student is awarded a regular high school diploma or the student exceeds the age of eligibility for FAPE under State law, whichever occurs first. States that require their LEAs to provide children who leave secondary school with a GED credential or alternate diploma with an SOP must comply with 34 CFR §300.199. Each State, under 34 CFR §300.199(a)(1), must ensure that any State rules, regulations, and policies conform to the purposes of Part B. Further, 34 CFR §300.199(a)(2) requires States to identify in writing to OSEP and to their LEAs any Stateimposed requirement that is not required by Part B of the IDEA or the implementing regulations, such as one requiring their LEAs to provide children who leave secondary school with a GED or credential or alternate diploma with an SOP.

#### Question B-4:

Is a public agency required to include in the SOP the documentation necessary to determine a student's eligibility for the Vocational Rehabilitation (VR) Services program and/or accommodations in institutions of higher education?

### Answer:

No. Section 614(c)(5) of the IDEA does not require the LEA to include in the SOP the documentation necessary to determine a child's eligibility for another program or service, such as the State VR Services program, or the child's need for accommodations in college or in other postsecondary educational settings. However, the SOP may include information that may assist another program to determine a student's eligibility for services or accommodations. For example, section 102(a)(4) of the Rehabilitation Act of 1973, as amended, requires the State VR Services program to use information submitted by education officials to assist in making eligibility determinations for students with disabilities. The SOP is one of the educational records that may be used to provide information to determine a student's eligibility for VR services.

A postsecondary student who has identified him or herself as an individual with a disability and has requested academic adjustments, auxiliary aids or modifications of policies, practices or procedures from an institution of postsecondary education may, consistent with an institution's documentation requirements, provide the institution with the SOP as part of the documentation to be used by the institution to determine whether the student has an impairment that substantially limits a major life activity, as defined under Section 504 of the Rehabilitation Act (Section 504)

and/or the Americans with Disabilities Act (ADA), and requires academic adjustments as defined in the Section 504 regulations at 34 CFR §104.44. Institutions may set their own requirements for documentation so long as they are reasonable and comply with Section 504 and the ADA.

**Question B-5:** 

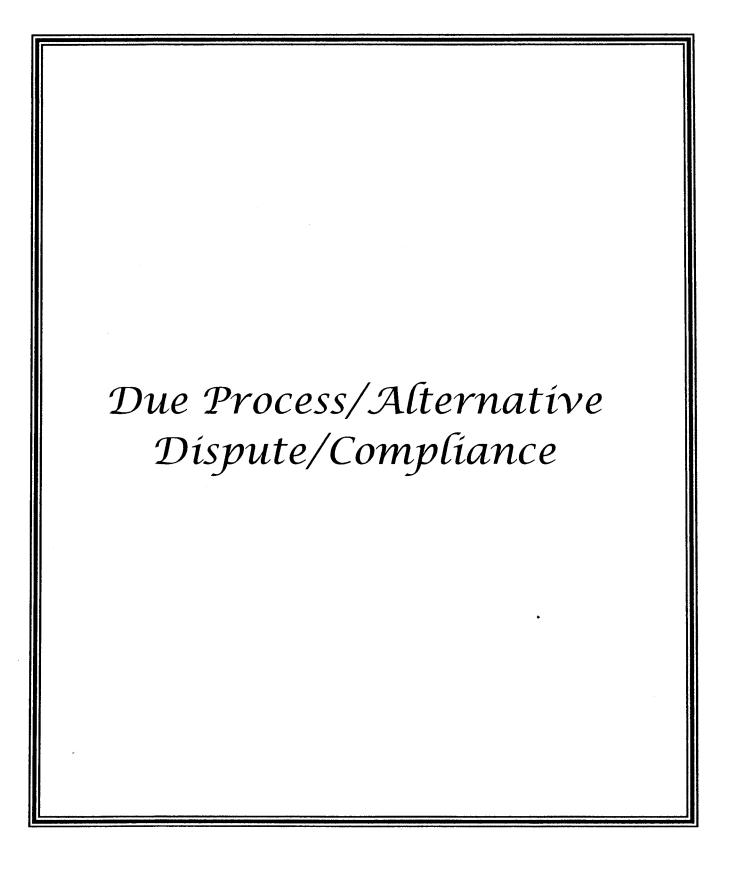
How can the SOP assist the VR Services program in the provision of transition services to eligible VR students with disabilities?

Answer:

In addition to providing information that may be used to determine a student's eligibility for VR services, the SOP serves as a functional document that provides the VR Services program with information describing a student's vocational, employment, academic and personal achievements as well as vocational and employment supports needed by the student.

If determined to be eligible to receive VR services, the student, with the assistance of a VR counselor, develops an individualized plan for employment (IPE) to achieve a specific employment outcome. An SOP may facilitate the development of a meaningful IPE by providing information that describes the student's secondary and postsecondary goals, career interests, levels of academic performance, need for reasonable accommodations for work, and the functional levels of the student's social and independent living skills, at the time of completion of secondary education.

In general, an SOP that informs the State VR Services program of the student's academic and vocational functional performance may minimize delays in the transition service delivery system and better prepare the student for a successful career.



The party filing the Complaint is not entitled to a due process hearing if the Complaint does not comply with 20 U.S.C. § 1415 (b)(7)(A). (20 U.S.C. § 1415 (b)(7)(B))

The determination of whether a Complaint is sufficient and in compliance with the requirements of 20 U.S.C. § 1415 (b)(7)(A), shall be made by an administrative law judge <u>solely</u> on the content of the Complaint. (20 U.S.C. § 1415 (c)(2)(D))

A party may amend its Complaint only if: (I) the other party consents in writing and a Resolution Session is held; or (II) if permitted by the Administrative Law Judge. (20 U.S.C. § 1415 (c)(2)(E)(i))

All timelines, including those for a Resolution Session, start over upon the filing of an amended Complaint. (20 U.S.C. § 1415 (c)(2)(E)(ii))

#### REQUEST FOR MEDIATION AND DUE PROCESS HEARING

**IMPORTANT**: This form is designed to assist parties in requesting mediation services and a due process hearing. Provide all information requested. Failure to provide all information may result in delay or dismissal of your hearing request. OAH will send you a notice that identifies your mediation and Hearing Dates. OAH will also send you a list of attorneys and advocates who provide free and reduced cost services.

This is a request for Hearing and Mediation	☐ Hearing Only
This Request is being initiated by the ☐ Parent <b>STUDENT INFORMATION</b>	□ School District (or other LEA)  PARENT INFORMATION
First and Last Name (Required)	First and Last Name
Street Address (Required)	Street Address
City, Zip Code (Required)	City, Zip Code
Date of Birth	Home Phone
Grade Level	Work Phone
Student's Primary Language (Required)	Cell Phone
School of Attendance (Required)	Fax
District of Residence (Required)  Is the Student a person of color? Please check the appropriation of Yes No De	ate box. (California Department of Education requirement)

# **PARTIES TO BE NAMED**

INSTRUCTIONS;, please list the Parties to be named in the Due Process Hearing Request. This includes any school district, county office of education or other public agencies responsible for providing services you feel should be a party in the hearing. (Use additional sheets if necessary)
Party and Address
Party and Address
Party and Address
STATEMENT OF REASON(s) FOR REQUEST: Federal and state law require you describe with specificity the nature of the problem(s)/complaint(s). Simply describing a problem as "Student denied FAPE for school year 2005-2006" is insufficient. Include facts, dates, references to specific IEP provisions, etc. Lack of specificity in identifying problem(s)/complaint(s) may result in the dismissal of this Due Process Hearing Request.  PROPOSED RESOLUTION FOR EACH PROBLEM/COMPLAINT: Federal law requires that you provide a proposed resolution to each identified problem/complaint to the extent known. Again, please be as specific as possible. A proposed resolution that the District "provide a Free Appropriate Public Education (FAPE)" is insufficient.  In the space below please identify specific problem(s)/complaint(s) and a proposed resolution for each to the extent known. All that is required and recommended is a simple, clear, concise statement of the problem/complaint. If you run out of space, use additional sheets with the same format. Lengthy narratives often create more confusion than clarity and are not a substitute for a clear statement of the dispute. If a narrative is included, attach it to your Request.  Problem/Complaint #1:
Proposed Resolution #1:
Problem/Complaint #2:

Proposed Resolution #2	
Problem/Complaint #2:	
Froblem/Complaint #3.	
Proposed Resolution #3	
Problem/Complaint #4:	
Proposed Resolution #4:	
Problem/Complaint #5:	
Proposed Resolution #5:	

Persor	n(s) needing interpreter services:	ECESSITY OF I	NTERPRETER	Language:
	Signature of Pa	ARTY REQUEST	ING DUE PROCES	s Hearing
Please	Print Name in this block			Date
Please	Sign Name in this block			
Additio indicate	UCTIONS: Federal and state law requinally, you must send or deliver a copy to your compliance with this requirement	to the Office of Admini nt by checking the appi	ver a copy of this Request strative Hearings. Retain ropriate box below.	a copy for yourself. Please
	eprovided a copy of this Reques and to the Office of Adminis			liation to all the named
	First Class Mail	•		
	Facsimile Transmission			
	Messenger Service (UPS, Fe	edEx, Other couri	er service) Please at	tach proof of service
	Personal Delivery (If other the made service)	han requestor ple	ase name person wh	10
Signa	ture of person completing this	S Statement of Se	 rvice	

#### FORM 3: SAMPLE PROOF OF SERVICE

#### PROOF OF SERVICE

On [DATE] I served a copy of the following documents[s] to each person[s] named below at the addresses listed:

[TITLE OF DOCUMENT: i.e., REQUEST FOR MEDIATION AND DUE PROCESS HEARING]

[NAME OF PERSON]
XXXXXX Unified School District
1234 North Street
Any City, CA 91234
Fax No: (XXX) XXX-XXXX

[If the school district is represented by an attorney, list that attorney's name and address (and fax numbers if sent by fax) and send a copy of the document and the proof of service to that attorney also.]

[[If any other parties are involved, list those parties names and addresses (and fax numbers if sent by fax) and send a copy of the document and the proof of service to those parties as well.]

I served this document by the following method	od:
Hand delivered	
U.S. Mail	
Fax transmission [keep a copy of the tran	smission report to show that the fax was received.]
I declare under penalty of perjury under the sa and correct. This declaration was executed at	ws of the State of California that the foregoing is true [Name of city], California, on [DATE].
	Printed Name and Signature

# PART 8: Motions and notices of insufficiency

A "motion" is a specific request asking a judge to do something and is usually made in writing. The motion should include the relevant facts and information and any necessary legal analysis or explanation to convince the judge to grant it. Any party to the proceeding may file a motion with OAH. The ALJ's decision or "ruling" on a motion filed prior to the due process hearing will be sent to the parties in a document called an "order." If a party files a motion at the due process hearing, the ALJ will likely rule on the motion during the hearing.

#### What should a motion contain?

You may write your motion in a letter and simply state what you want and the reasons why. Your motion must also contain a proof of service (Form 3) or a statement that you sent a copy to all involved parties and how you sent it.

#### Where do I file a motion?

Motions, as with all documents in a special education matter, are filed with the Sacramento OAH office. It may be faxed to (916) 376-6319, hand delivered or mailed to the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833-4231.

At the time you mail or fax your motion to OAH, you must mail or fax a copy of the motion to the district and any other parties. If an attorney represents the district or another party, you must send the copy to that attorney. The district and other parties, if any, will have three business days after they receive the motion to file a response with OAH and to send a copy to you or your representative.

#### How do I respond to a motion filed by the district?

If any party files a motion, the party will send a copy to you or your representative. You will then have three business days to file a response with OAH to the district's motion. You must provide the district and any other parties with a copy of your response. If you cannot file your response within the required timeline, you may write a letter to OAH, with a copy to the school district or the school district's attorney, and request additional time to respond. Remember to include a proof of service (Form 3) with your letter. Do not ignore a motion; you should respond in writing even if you agree to the motion.

#### What are some examples of motions?

- "Notice of insufficiency." This is usually filed when there is a question as to whether the request for due process hearing has sufficient information necessary, as to each claim, to allow one of the parties to respond to the request for due process hearing. (See Form 16 for sample.)
- Motion to continue (postpone) the hearing dates. (See Form 6 for sample.)

- "Stay put" motion to ensure your child remains in his last agreed upon and implemented placement while you resolve the dispute with the district. (See Form 17 for sample.)
- Motion to dismiss some of the issues in the request for due process hearing, or maybe even the entire request for due process hearing. Some of the commonly seen grounds for a motion to dismiss include:
  - Issues alleged by the parent are not within the jurisdiction of OAH,
  - Student is not a resident of the district (residency does not relate to immigration status, but generally means the student does not live in the district), or
  - The parents refused to participate in a resolution session convened by district.
- Motion to amend the request for due process hearing. This is typically a motion to add a claim or claims to the request for due process hearing. To prepare your amendment to the request for mediation and due process hearing, you should simply add the additional claim or claims to a copy of your original request and file the amended document with OAH, along with a letter requesting permission to amend your request. Remember to include a proof of service (Form 3). Any motion to amend your complaint must be filed at least five days prior to the due process hearing and your amended request will not be deemed filed until an ALJ grants your request for permission to amend. An amendment of your request for mediation and due process hearing will reset all timelines in your case, and a new scheduling order will be issued by OAH. (See Part 3 regarding the scheduling order.)
- Motion to add another party. Typically the district or parents request that OAH add as a party another school district or county mental health agency that may be responsible for providing special education services to the student. This request may be filed in the form of a letter accompanied by a proof of service, and the letter, the proof of service, and the request for mediation and due process hearing must be served on the party to be added. When adding a party, it is sometimes necessary to amend the request for mediation and due process hearing.
- Motion to consolidate. The district and parents may have filed separate requests for due process hearing that involve similar issues. Instead of two separate hearings, either the district or parents will file a motion to consolidate both cases into one matter so that there is only one hearing. This request may be filed in the form of a letter accompanied by a proof of service, and the letter and the proof of service must be served on all other parties.

## What is a notice of insufficiency (NOI)?

Federal and state law require that a request for mediation and due process hearing include certain information: the child's name, age, address and the school the child goes to along

with specific allegations (complaints or claims) about the problem and a requested way to fix it. The law allows a party to challenge whether the request for due process hearing filed by the other party contains sufficient facts (enough specific information) to support the claims or complaints it is making. (See Form 16 for sample.)

A party has 15 days after receiving the request for mediation and due process hearing to file a notice of insufficiency with OAH. If this doesn't happen, the due process request will be considered sufficient. In ruling on a notice of insufficiency, OAH looks to the request itself to see if it is sufficient. If OAH determines your request for due process hearing is sufficient (complete with all required information), the mediation and hearing will proceed as scheduled.

If OAH determines that your request for due process hearing is insufficient, OAH will cancel the mediation and hearing dates, and give you 14 days to submit to OAH and the other parties an amended (updated) request for due process hearing that contains sufficient facts.

Finally, OAH may issue an order that finds some claims sufficient and others insufficient. If OAH finds the request partially sufficient, the party who filed it will be given 14 days to file an amended request that includes both the claims that were determined by OAH to be sufficient and additional facts to correct those that weren't. All originally scheduled dates for hearing (prehearing conference and due process hearing) will remain on calendar and the matter will move forward on the claims in the request for due process hearing that were determined to be sufficient. If a party files an amended request for due process hearing, OAH will cancel the mediation and hearing dates and send out a new scheduling order with new dates for the prehearing conference and due process hearing.

#### Examples of insufficient claims:

 "The district denied student a free appropriate public education by not providing student with needed services."

This claim is insufficient because it doesn't have any specifics—it does not identify the services (such as occupational therapy) that the student requires, why the student requires this service to receive FAPE, what IEP includes the service, and when the district failed to provide the student this service.

"The district failed to identify student as a child who requires special education services."

This claim is insufficient because it does not identify when the district should have identified the student as a child who might require special education and the facts that put the district on notice that the student might require special education services. Nor does it identify the alleged disability for the student.

 'The individualized education program proposed by the district will not allow student to make some educational progress.' This claim is insufficient because it does not identify the specific IEP at issue, the student's unique need (such as speech and language or reading problems), the services, if any, the district offered, and why the district's offer is not adequate.

• "The district did not assess student in all areas of suspected disability."

This claim is insufficient because it does not identify the areas of suspected disability, the assessment(s) that the district needed to conduct, and when this occurred.

• "Student requires an Independent Educational Evaluation."

This claim is insufficient because it does not identify the assessment that the district conducted or failed to conduct, why the district's assessment is not adequate or why the district needed to assess the student. It does not state when the parents requested the independent educational evaluation and the district's response to the request.

# PART 3: The scheduling order

# What happens after a request for a mediation and due process hearing or a request for mediation only is filed?

When OAH receives a request for mediation and due process hearing, it will issue and mail to the parties a "scheduling order and notice of due process hearing and mediation" (Form 4) generally within 48 hours. This scheduling order will contain important information about the process, including the name of the OAH calendar clerk assigned to your case. The OAH calendar clerk is your first point of contact for all questions related to your case.

Your scheduling order will also give you important information about the dates assigned for mediation, prehearing conference, and due process hearing. State and federal law require speedy resolution of due process matters in special education cases, and OAH is required to adhere to strict timelines to ensure that your case is handled from start to finish in a timely manner. The matter will proceed on the dates in the scheduling order unless OAH grants a "continuance" of the hearing dates upon a showing of good cause. Continuances are discussed later in this guide.

Please read this Scheduling Order very carefully and keep a copy of it handy throughout the duration of your case.

# The timelines and sequence of events in parent-filed requests for mediation and due process hearing

Under state and federal law, when a parent files a request for mediation and due process hearing, OAH has 75 days within which to issue its decision. After a parent files a request for mediation and due process hearing, the following procedures are followed:

#### Resolution Session:

State and federal law require a 30-day resolution period as part of your due process proceeding in parent-filed cases. Therefore, OAH will not schedule a mediation or due process hearing during this 30-day resolution period. During this resolution period, the school district is required to schedule and convene a resolution session with you. The purpose of this resolution session is to give you and the school district the opportunity to resolve the dispute short of a Due Process Hearing. (See Part 4 regarding resolution sessions.) OAH does not have any jurisdiction or authority over the resolution session.

OAH will include with your scheduling order a form for you to report the outcome of your resolution session. Please mail or fax the form to OAH in Sacramento.

#### Mediation:

OAH will calendar mediation on approximately the thirty-fifth (35) calendar day after the request for mediation and due process hearing is filed. (See Part 5 regarding mediation.) The scheduling order

will include the name of the mediator assigned to your case, and the date, time, and location of your mediation.

#### **Prehearing Conference:**

A prehearing conference will be calendared on a Monday or Wednesday approximately one week prior to the date scheduled for the due process hearing. (See Part 7 regarding prehearing conferences.) Your scheduling order will include the date and time of your prehearing conference, as well as information regarding what you are required to file prior to the prehearing conference.

#### **Due Process Hearing:**

Your due process hearing will generally be set on the fifty-fifth (55) calendar day after your request for mediation and due process hearing is filed. (See Parts 9 and 10 regarding due process hearings.) Your scheduling order will include the date, time, and location of your due process hearing.

#### Continuances:

Although OAH is required to adhere to the timelines provided by statute, OAH may reschedule the initial mediation date based on a request of the parties, and may continue the prehearing conference and due process hearing dates if the parties mutually agree to a continuance. Your scheduling order will be accompanied by a form to request to change the due process hearing date initially assigned to your case. (See Form 5.) The form is also available on the OAH website. A continuance may also be granted if one party files a request for a continuance based on good cause even if the other side does not agree to the continuance. (See Form 6.)

# The timelines and sequence of events in district-filed requests for mediation and due process hearing

Under state and federal law, when a school district files a request for mediation and due process hearing, OAH has 45 days within which to issue its decision. The timeline is shorter than in parent-filed cases because, in school district-filed cases, no resolution session is required. The Mediation will be set generally on the fifteenth (15) day after the request is filed and the due process hearing will generally be set on the twenty-fifth (25) day after the request is filed. The prehearing conference will be scheduled on a Monday or Wednesday approximately one week before the hearing.

# The timelines and sequence of events in requests for "expedited" due process hearings filed by a district or a parent

In cases involving "expedited" due process hearings, the timelines are much stricter than those described above. An expedited hearing usually involves a disciplinary matter. The law requires that an expedited due process hearing occur within twenty (20) school days from the date the request is filed, and that a decision by OAH be issued within ten (10) school days after the hearing. Your scheduling order in any case involving an expedited due process hearing will specify a mediation date, a prehearing conference date, and due process hearing date based on the timelines applicable to expedited due process matters. In cases involving "expedited" due process hearings, the mediation will be set on the tenth (10) day after the filing, a prehearing conference will be set on the fourteenth

(14) day after the filing, and the expedited due process hearing will be set on approximately the twentieth (20) school day after the filing. Expedited matters may not be continued. If the matter is filed as an expedited case, the strict timelines outlined in your scheduling order will be enforced and you should anticipate having the hearing on the dates listed.

If your case involves some claims that are "expedited' and some that are not, your case will be considered a "dual" case, and you will receive a scheduling order for the dual case that includes dates for mediation, prehearing conference, and due process hearing for both the expedited and the non-expedited issues. (See Form 7.)

# The timelines and sequence of events in requests for mediation only filed by a district or a parent

When OAH receives a request for mediation only, OAH will send to all parties a "Scheduling order for Mediation Only." (Form 8.) The scheduling order which will contain the date, time, and place of the mediation and the name of the mediator. The mediation is required to be held within fifteen (15) days of the filing of the request for mediation only. (See Part 5 regarding "mediation only" filings.) Your scheduling order in a mediation only case will be accompanied by a form for you to use to request a continuance of the date assigned by OAH for mediation.

## PART 4: The resolution session

When a request for mediation and due process hearing is filed with OAH by a parent, the school district is required to hold a meeting called a "resolution session" within 15 days of receiving notice of the filing. It does not matter if the school is on summer break at the time the request for due process hearing is filed. The school district must hold the resolution within 15 days of receiving notice of the filing. The resolution session is required by federal law, and its purpose is to give the parties the opportunity to resolve the dispute as quickly as possible. A resolution session is not required when a school district files a request for mediation and due process hearing or if either party files a request for mediation only. In a case filed as an expedited hearing, a resolution session is required to be held on the same timelines, but the time for the expedited hearing runs concurrently with the time required to hold the resolution session.

These resolution sessions are between the school district and the parents, and OAH is not involved. OAH does not schedule any mediations or hearings within the first 30 days after a request for due process hearing has been filed by a parent in order. The law requires that the parties have a "cooling off" period for 30 days in an effort to informally resolve the matter and complete the resolution session.

#### Can the resolution session be cancelled or waived?

The parents and the school district may agree in writing to skip (waive) the resolution session. When the parties waive the resolution session, they must provide OAH with a written agreement to this, signed by both parties, and the matter will proceed directly to mediation and hearing. A waiver of the resolution session must be in writing and signed by all parties agreeing to waive the resolution session. (Form 9.) When you waive a resolution session and notify OAH in writing, most likely the dates for hearing will be advanced so that the hearing will occur sooner.

#### Am I required to participate in the resolution session?

Yes, unless both you and the district have agreed to skip it (see above). The resolution process is mandatory and the parents and the school district must both attend. If either the district or the parents decline to participate in the resolution process, certain consequences may occur, as described below.

If the parents do not participate in the resolution session, and the parties have not otherwise waived the meeting in writing, a due process hearing may not take place until the parties hold the meeting. If the school district is unable to get the parents to participate in the resolution session after the school district has made reasonable efforts to do the same, and the school district can document those attempts, the school district may request that OAH dismiss the parents' request for due process hearing. Also, OAH can dismiss the request if the parents won't participate in a resolution session. OAH will not dismiss the parents' request without giving them three business days to respond to the school district's motion. Saturdays, Sundays, and state and federal holidays do not count as business days for this purpose. Summer breaks and school vacations count as business days

If the school district does not schedule a resolution session within the required time (15 days) or is unwilling to participate in the meeting, parents may request that OAH set the matter for due process hearing immediately (advance the hearing dates). This request may be made by letter to OAH accompanied by a proof of service (Form 3) that the request has been served on the other party. (Form 10.)

If the hearing dates are advanced based on the school district's failure to schedule or participate in a resolution session, the due process hearing may be held before the 30 days allowed for the resolution session have passed.

#### What is the purpose of a resolution session?

The resolution session gives you and the school district the opportunity to work together to resolve the dispute stated in your request for hearing before a hearing is held. The resolution session is less formal than a hearing, may result in early resolution of the dispute, and may help repair relationships and open lines of communication between you and the school district.

If you and the school district do reach an agreement, you will have three business days to rescind, or cancel, that agreement by notifying the school district in writing. If it is not cancelled within three business days, it is legally binding and enforceable in state or federal court. You should be aware that this is the only part of the process where you have a right to change your mind. If, for example, you reach a settlement at mediation or prior to hearing, there is no right to change your mind.

#### Who attends the resolution session?

You and the school district determine which members of the IEP team will attend the resolution session. Participants should include you, a school district representative who can make decisions on behalf of the school, and any IEP team member who has relevant information about the issue or issues that the parties will discuss at the meeting. It may be appropriate to have your child attend the meeting as well. This is a decision that you must make. You may also have an attorney, advocate, or supporting friend attend with you and/or help you prepare for the meeting. School districts may not bring an attorney to the resolution session unless you bring an attorney. A school district may not bring an attorney if you bring an advocate so long as you have determined that the advocate has relevant information relating to the child and that you want that person to be an IEP team member at the resolution session. If the parent is an attorney, the school district is not entitled to bring an attorney to the resolution session unless the parent brings another attorney. For purposes of the resolution meeting the parent is a parent, even if the parent is also an attorney.

#### How do I prepare for the resolution session?

There is no required agenda for a resolution session. The school district may prepare an agenda and/or take the lead in the discussion, so it is important that you prepare for the meeting in advance. You may prepare an agenda of items that you would like to cover at the meeting and/or take the lead in the discussion if you wish to do so. Here are some suggestions for preparing for the meeting:

- Prepare a statement that addresses all issues required for due process hearing, outline what you
  believe your child's needs are, and include ideas for possible solutions that you believe will
  resolve the situation. It is helpful to come prepared to discuss, and to be open to, a variety of
  possible solutions.
- You should organize your documents. You may record dates and notes on a sticky note attached to your documents, but you should not write on the documents themselves. You should bring to the meeting any documentation that supports your position regarding your child's educational needs, such as testing or assessments that you may have obtained on your own and that you may not have previously given to the school district.
- If you are uncomfortable in this type of meeting, or if you do not have experience with settlement discussions, it may help you to practice making your statement to an advocate, a family member, or a friend before going to the resolution session.
- It may be helpful to identify sections of the law or regulations that you feel the school district may not be following.
- It is also helpful for you to prepare a list of questions you may have for the school district, to anticipate questions the school district may have or responses they may have to your position or suggestions. Be ready to answer the questions or respond to the school district's position with concrete examples.
- A resolution session may be an emotional experience for both you and school district
  employees. It may be helpful to be prepared for the emotion and try to focus on future
  solutions rather than past problems.
- Be prepared to listen to the points raised by the school district. If you and the district staff listen carefully to each other, the meeting is more likely to result in an agreement.

#### May I bring my attorney to the resolution session?

Yes. However, the district may not bring an attorney to the resolution session unless you do.

#### What if I need an interpreter for the resolution session?

Because OAH does not have jurisdiction over resolution sessions, we don't have authority to provide interpreters for them. You should contact the school district and ask for an interpreter if one is needed.

#### What if the case is settled during the resolution session?

Both parties will sign a settlement agreement. The party who filed for hearing should notify OAH that the matter is settled and should be withdrawn. However, both parties should notify OAH in writing that the case has settled. The notification can be sent by fax or mail.

# What if I agree to something at the resolution session, and then change my mind and want to cancel it?

Under federal law, either you or the school district can withdraw from any agreement that is reached at the resolution session within three business days after signing it. If the agreement is cancelled, then the matter will proceed to mediation, a prehearing conference, and due process hearing according to the scheduling order issued by OAH.

If you want to cancel the agreement, you should contact the school district. It is best to put your request to cancel in writing. To avoid any confusion, you should also deliver a letter to your school district and any other involved parties at the same time stating your wish to cancel. You should also send a copy of the cancellation to OAH.

If your case has been dismissed by OAH because of the settlement you later canceled, you may refile your request for due process hearing with OAH. Remember that an agreement reached at resolutions session is the only time in the process where you have a right to change your mind.

#### What if the case does not settle during the resolution session?

The matter will proceed to mediation and a due process hearing on the dates sent to you in the scheduling order. (See Part 3.) You must send a notice of resolution outcome to OAH whether the matter settles or not. Usually, the school district sends this notice to OAH.

# What if the school district does not implement the agreement reached at the resolution session?

The settlement agreement is a legally binding agreement and if one party fails to comply with the agreement, the other party may seek enforcement of the agreement by filing a compliance complaint with the California Department of Education (CDE) or by filing a complaint in state or federal court. OAH does not have authority to enforce these agreements.

If the school district fails to comply with a due process hearing order or implement the settlement agreement, a complaint may be filed with CDE by downloading the complaint form from the CDE Special Education Division Web site:

http://www.cde.ca.gov/sp/se/qa/documents/cmplntproc.doc.

Complete the form, include a copy of the due process hearing order, and fax or mail to: Procedural Safeguards Referral Service (PSRS)
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814-3704
Fax: (916) 327-3704

For additional information about how to file a complaint, please call PSRS at (800) 926-0648, Monday through Friday, 9:00 a.m. to 4:00 p.m.

#### What is the difference between a resolution session and mediation?

Mediation is a voluntary process in which both parties voluntarily agree to meet with a trained neutral person (one with no stake in the matter who can be objective and unbiased) to facilitate settlement discussions. A resolution session is required by statute in certain circumstances. Congress added the requirement of a resolution session to the *IDEA* in 2004 as another means of encouraging parents and school districts to directly resolve their differences as early in the process as possible and without the need for a due process hearing. In a resolution session:

- There is no third party to assist the parties' discussions and settlement process. In mediation, OAH provides a mediator to assist the parties in reaching settlement.
- If you do not bring an attorney to a resolution session, the district may not bring one. The school district may bring an attorney to mediation whether you do or not. (The exception to this is that neither party may bring an attorney or educational advocate to a "mediation only" session.)
- In a resolution session, you may change your mind and cancel the agreement within three business days after a resolution agreement is reached. A settlement agreement reached at mediation is a final agreement, and neither party may cancel it.
- Discussions between you and the school district during a resolution session are not confidential. This means that the school district may use those discussions as part of the evidence in a later hearing. Discussions during mediation are confidential, and that privacy is protected by law. Evidence of those discussions may not be introduced at a due process hearing. However, the parties at a resolution session may make the discussions confidential by entering a written agreement signed by both parties that the discussions are confidential and protected in the same way as talks at mediation.

# What happens to the due process proceeding when an agreement is reached at a resolution session?

If neither party cancels the agreement, after three business days, the agreement is final. The parties should notify OAH in writing that a final agreement has been reached, and OAH will close the case.

#### PART 5: Mediation

OAH is required by state and federal law to offer mediation to parties in due process proceedings. Mediation is voluntary, and a party in a due process proceeding is not required to participate in mediation. However, the parties in most due process proceedings with OAH voluntarily participate in mediation, and most settle their cases there.

Mediation is a process during which the parties, facilitated by a mediator, work to resolve the dispute. The mediator is a neutral, objective and unbiased third party who helps the parties communicate their concerns to each other. With the assistance of the mediator, all parties are involved in the decision-making process and everyone has an opportunity to express concerns, offer opinions, make suggestions and generate solutions. The focus of the mediation is on solving the disagreements between you and school district staff and on arriving at a solution that satisfies all the parties.

#### What are the benefits of mediation?

Mediation has proven to be a highly effective and successful method to resolve disputes, and a great majority of cases resolve at mediation. In addition, the parties are more likely to maintain a cooperative relationship in the future. Settlement by mutual agreement also allows the parties to have a great deal of flexibility in reaching a mutually acceptable settlement/written agreement. Mediation allows the parties to negotiate for what they believe is most important to them in resolving the dispute. If a dispute goes to a due process hearing, the ALJ makes the final decision, and that decision may not be completely satisfactory to either party. Mediation is less costly than a hearing in terms of time, money, and personal stress, and allows the parties to control the outcome. Anything said during mediation is confidential.

#### What is "mediation only," and when is it held?

Either you or a school district may file a request for "mediation only." OAH will schedule the session to occur within 15 days of the date of the filing of the request and send a scheduling order to all parties. A request for mediation only will result in just that – a mediation only. Nothing else will be scheduled. If the disputes are not resolved at mediation only, then OAH will close the case, and one of the parties could then file a new request for mediation and due process hearing to have a different ALJ conduct a due process hearing to resolve the dispute.

#### Where is the mediation generally held?

The mediation is held at a location reasonably convenient for the parents, which is generally the school district office. You will receive notice of the location of the mediation in the scheduling order.

#### How can I reschedule the mediation date if I cannot attend on the date scheduled?

OAH will reschedule the initial mediation date that is contained in the scheduling order if all parties agree to a new date. All parties should sign the form setting the new agreed-upon mediation date

that is sent in the scheduling order. Because mediation is a voluntary process, either party may decide to cancel the mediation at any time.

#### What if one of the parties does not want to participate in mediation?

Since the mediation process is voluntary, either you or the school district may cancel (waive) mediation if either of you does not wish to participate. There is no requirement that a party provide any reason for its decision to decline to mediate. OAH will cancel the mediation if either the school district or you notify OAH that they do not wish to participate.

If all parties later decide that mediation will be helpful, OAH will reschedule a session. Mediation is available at any time to the parties, even during a due process hearing. If the parties request mediation during hearing, generally the hearing will be "dark" (not in session) for one day while the mediation is held. If the matter does not resolve, the hearing will resume the next day.

#### Who is the mediator?

The mediator is an administrative law judge (ALJ) employed by OAH. These professionals are also attorneys and have received extensive training both in mediation and special education and have been practicing law for a minimum of five years.

#### What is the role of the mediator?

The role of the mediator is *not* to act as a judge and make factual findings and/or conclusions of law about the issues. The mediator does the following:

- Assists as a neutral party, who is unbiased, objective and impartial, and who has no stake in the outcome of the case.
- Facilitates open communication between you and other parties.
- Creates a safe, comfortable environment that facilitates a back-and-forth, positive interaction between the parties.
- Assists the parties in understanding each other's viewpoint and helps them reach a mutually satisfactory resolution to the dispute.
- Clarifies points of agreement and disagreement between the parties to assist in identifying options that may be available to resolve the case.

Don't feel pressured to settle at mediation. It is up to you to decide if the agreement is appropriate for you and your child. If you cannot resolve the matter on terms acceptable to all, the matter will move on to a due process hearing.

#### Who generally attends the mediation?

Participants at mediation include the mediator, the parents, a school district representative who can make decisions on behalf of the school, and any IEP team member who has relevant information about the issue that the parties will discuss at the meeting.

The parties may bring an attorney or advocate to the mediation, unless the request was for "mediation only." A parent may also bring an advocate or a supporting friend to the mediation.

#### May I tape record the mediation?

No. They are confidential discussions.

#### How do I prepare for the mediation?

- Write down an outline of what you believe your child needs, and include ideas for possible solutions.
- Organize your documents. Bring any documentation that supports your position regarding your child's educational needs, such as testing or assessment reports that you may have had done on your own.
- Consider consulting with an attorney or advocate prior to the mediation. If an attorney or advocate will be representing you, definitely discuss the issues, and possible solutions, with that person before the mediation. You are not required to give the school district notice if you plan to have an attorney or advocate with you at the mediation.
- It may be helpful to identify sections of the law or regulations with which you feel the school district may not be complying.
- Come prepared to discuss, and be open to, a variety of possible solutions.
- Try to anticipate questions the school district or mediator may have or responses they may have
  to your position or suggestions, and be ready to answer the questions or argue the school
  district's position with concrete examples.
- Mediation can be an emotional experience for all parties, but try to focus on future solutions rather than on past problems.
- Really *listen* to solutions that are offered and the reasons why.

#### What are the benefits of mediation?

Mutual agreements generally result in greater satisfaction for all parties. Mediation may be less costly than going to hearing and can result in resolutions more quickly than traditional legal procedures. Solutions that would not be ordered by a judge in a hearing may be available through mediation. Most importantly, the parties control the outcome if they reach agreement.

#### What happens during mediation?

The mediator will introduce everyone and seat you all at a table. He or she will explain the purpose of mediation, the mediator's role, and how the session will proceed. The mediator will ask all the parties present to sign in on an OAH form that shows who participated.

The mediator will ask the party who filed the request to give an overview of the issues in the case, what issues have been resolved, if any, and what issues are still in dispute, and what resolution the filing party would like to see. Then the other party will be given a chance to respond. Afterward, the mediator will assist the parties in discussing each issue and ideas for resolving the dispute.

Either party can ask to speak with the mediator alone. This is called a caucus. If the parent asks to caucus with the mediator, the school district staff will generally go into another room so that the parent may have a private discussion with the mediator. If the mediator caucuses with one party, the mediator will most likely also caucus with the other party. At times the parties may ask to speak privately without the other side and without the mediator present. Each mediation is different. Throughout the session, the parties may caucus alone or with the mediator several times. Settlement offers may be discussed during the caucuses and the parties may ask the mediator to convey offers and counter offers to the other party, similar to how you might negotiate buying a home with a realtor.

Mediations may last an entire day except for mediations involving the Los Angeles Unified School District. Those mediations are set for a half day. If necessary, and at the request of both parties, the mediator will continue the mediation on another day if this will be beneficial.

#### What happens if we settle the disagreement at mediation?

The parties may resolve some or all of the issues at the mediation, and you will confirm this by putting it in written form on the spot. This is called a written settlement agreement or a mediated settlement agreement.

The parties and their representatives will review the settlement language and make suggestions and changes as necessary. After the parties and their representatives have all agreed on the terms and language of the settlement agreement, you'll all sign the document. Unless school board approval is needed, the case will be concluded. The mediator will have with him or her OAH forms that the parties can sign to close the case. If school board approval is required, the hearing will be postponed, but not dismissed. Once board approval is obtained, the party who filed the request with OAH is required to provide a letter to OAH indicating that the matter resolved at mediation so that OAH can close the case and cancel all dates scheduled for hearing. If the school board does not approve the agreement, the parties should notify OAH, and the matter will proceed to another mediation and then to due process hearing if the matter is not settled.

#### What happens if no agreement is reached at the mediation?

If the matter was filed as a "mediation only," the case will be dismissed by OAH at the conclusion of the mediation. But remember, you can still refile for a hearing if the issues are not resolved by filing a request for mediation and due process hearing (Form 2).

If a request for a due process hearing was included, the matter will proceed to a prehearing conference (see Part 7) and a due process hearing (see Part 10). At the conclusion of the mediation, the mediator will confirm the hearing dates.

## What if we do not resolve the case at mediation, but want another mediation to try again?

Mediation is available at any time during the due process proceedings as long as both parties agree to participate. If the parties believe it will be helpful to have an additional mediation, they should agree to a date for it and make the request to OAH. OAH will generally schedule the mediation on the date selected by the parties.

## PART 6: The voluntary settlement conference

The voluntary settlement process is another way to help the parties work out their disagreement before the hearing. If you have filed a request for mediation and due process hearing and have been unable to resolve your dispute through mediation, you may also request a voluntary settlement conference to try to solve it before the hearing. OAH will provide an administrative law judge (ALJ) for the conference. Parties can have their attorneys present.

#### How does a voluntary settlement conference differ from mediation?

A voluntary settlement conference is more formal than mediation, and the ALJ assigned may be more "evaluative." In other words, the ALJ may tell the attorneys and parties how he or she might rule on certain issues, based on the facts. The ALJ may structure the voluntary settlement conference to meet the needs of the particular dispute. For example, you may be in the same room as the other party or parties, or you may be in separate rooms. In mediation, the ALJ is there to help facilitate discussions and let the parties come up with a resolution that is acceptable to both sides. In a voluntary settlement conference, the ALJ is likely to be expressive about what resolutions are appropriate and the likelihood a party might prevail at hearing.

#### How do I request a voluntary settlement conference?

You should contact the other party or parties, and ask them if they are willing to participate in a voluntary settlement conference. All parties have to agree to set a voluntary settlement conference for it to happen. Once you have agreement from the other party or parties that they are willing to participate, you may request a voluntary settlement conference a letter to OAH, signed by all parties, and sent by mail or by fax to (916) 376-6319.

The request should contain pertinent information about the case, such as the case name and number. It should state that the parties want to participate in a voluntary settlement conference to try to settle the case, and should propose dates that you and the other party or parties are available to participate. You should file a proof of service with your request (Form 3) to show OAH you have served a copy of your request on the other parties. You must send a copy of your request to the other party or parties in the due process proceeding (hand delivery, mail, or fax), or to their attorneys if they are represented, at the same time you send it to OAH.

If your request is granted, OAH will set the date and time for the voluntary settlement conference and will provide written notice of the date, time, and place to you and the other parties. (See Form 11.) Generally, the voluntary settlement conference is held a few days before the hearing begins.

#### Where is the settlement conference held?

A voluntary settlement conference is held at the offices of OAH, unless otherwise ordered. Each party or representative who attends is required to be fully familiar with the facts and issues of the case, and is required to have the authority, or to be able to obtain authority immediately by phone, to negotiate and reach settlement terms.

#### What are settlement conference statements?

You may be required by OAH to file a "Confidential Settlement Conference Statement" at least three business days prior to the voluntary settlement conference describing the factual and legal issues and the status of any previous settlement discussions in the case.

#### What should I bring to the settlement conference?

You should bring any related documents and a draft of any settlement proposal on computer disk or in writing.

#### Is the settlement conference confidential?

Yes, unless you and the other parties agree otherwise.

#### May I tape record the settlement conference?

No, because the discussions are confidential.

## What happens at the end of the settlement conference?

If you reach a settlement, it will be written into an agreement and the case will be dismissed.

Sometimes school districts must get approval of a settlement from the district superintendent or the school board. After that it will become final. The hearing will generally be postponed while the board approval is pending. If the school board does not approve the agreement, the parties should notify OAH, and the matter will proceed to another mediation or voluntary settlement conference if the parties agree, and then to due process hearing if the matter is not settled.

If no agreement is reached at the voluntary settlement conference, the ALJ will confirm the hearing dates with the parties and the matter will proceed to a due process hearing.

you want to say, write it down, and wait until it is your turn to speak. Not speaking at the same time and waiting for your turn to talk helps ensure that the hearing recording is accurate.

If you have any questions about whether something is or is not acceptable, you may ask the ALJ at any time.

### What are opening statements?

An opening statement is a brief introduction that explains what you expect the hearing to be about and what the witnesses and evidence will show. The opening statement should tell the ALJ what the case is about, what your evidence will show, and how that evidence will prove your case. A good opening statement is like a "road map" of the case.

In general, the party who filed the request for due process hearing presents his or her case first, so the ALJ will start with that party. The party who did not file the request for due process hearing presents his or her case after the party who filed the request for due process hearing presents his or her case. Therefore, the ALJ will ask each party, in turn, whether the party wishes to make an opening statement. No one is required to make an opening statement.

In a student-filed case, after your opening statement, or if you choose not to make an opening statement, the ALJ will ask the party against whom the request for due process hearing has been filed to give his or her opening statement. The party may give his or her opening statement at that time, or may "reserve" his or her opening statement and give it at the time the party presents his or her case.

In a school district-filed case, you may give your opening statement at the beginning of the hearing, or you may "reserve" your opening statement and give it when it is time for you to present your case.

An example of an opening statement might be:

"This case is about my daughter, Jane, who has autism. I disagree with the speech and language and occupational therapy assessments performed by the district. I want Jane to have independent speech and language and occupational therapy assessments. Also, Jane receives group speech and language and occupational therapy services now, but she is also entitled to receive clinic speech and language services and clinic occupational therapy services. I will be proving my case through testimony and exhibits."

You may then say who the witnesses are and what they will say, or what the documents prove. For example, you could say:

"I intend to call Mary Smith at the hearing. Mary Smith was my daughter Jane's second-grade teacher. She attended the IEP meeting on January 22, 2007, where the IEP team discussed the speech and language and occupational therapy assessments. I expect her to testify that Jane needs clinic-based speech and language services."

You may then say something similar for each of your witnesses. You need not say very much about each witness. It is enough if you state just a sentence or two about who they are and what you expect them to say at hearing.

# Development of an Opening Statement For Mediation

- Statement should be approximately 10 to 15 minutes in length.
- Begin by verbally giving the mediator and others in attendance a picture of your child. Talk about your child's strengths and areas of need. Who is your child, here is a time to be a proud parent. It is a good time to express your emotion regarding your child. Outside of school what does your child like and describe some accomplishments. Bring a photograph, drawings, school samples, awards, or anything which assists in demonstrating who your child is as a person.
- Give some history concerning your child in terms of their education, supports, services and placement. Discuss the issues which lead to your disagreement and brought you to mediation.
- List your specific requests which will resolve your outstanding issues. Be prepared to negotiate the items on your list.
- Do not use names of staff, frame all your comments in disagreements with the district. Keep your comments factual and without opinion in the opening statement. There will be opportunities to share other unedited thoughts and feelings in confidence during caucus with the mediator.
- You may read your opening statement or use it as a reference.
- Prior to mediation, your advocate should review the opening statement.

2001 Lynne Castelluco

#### "Failure to Implement the IEP"

(The most common complaint statewide)

#### Citation/Requirement

34 Code of Federal Regulations (34 CFR) section (§) 300.342(6): Each public agency shall ensure that ... [an] IEP ...]s implemented as soon as possible following the [IEP team] meetings ...

### FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to implement the IEP
- Issue: Was the IEP implemented? (This is the question to be answered by the investigation.)
- Questions typically asked by the investigator:

Was there an IEP in effect during the relevant time period?

What does the IEP say with regard to the specific allegation in the complaint?

If the language of the IEP is unclear, what did the parties intend the specific requirements of the IEP to be with regard to the issue in the complaint?

Did the District implement the requirements of the IEP?

If the District failed to fully implement the IEP, what were the specific causes of that failure?

What were the educational effects on the student of the failure to implement the IEP?

Were those educational effects so substantial as to constitute a denial of Free Appropriate Public Education (FAPE)?

Was any service or responsibility under the IEP delegated to another public or nonpublic school or agency?

What role did the district play in assuring that such services by other agencies were actually provided?

<u>EVIDENCE</u> (The investigator will typically request this type of documentation from the appropriate party[s].)

- Examples are listed below:
  - The current IEP
  - Service provider logs

Personnel records (attendance)

Testimony of service provider, student, parent, other, etc.

 The investigator will determine, through the investigation activity, programs and procedures would normally operate relative to the complaint and identify gaps or deviations from the norm

"Failure to Implement the IEP (Accommodations)"

#### FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to implement the IEP (accommodations)
- Issue: Were the accommodations specified in the IEP implemented?

 If services are contracted for, further evidence that the service is being provided (i.e., as noted above plus copies of contractual agreements; billing records; service logs)

For services provided at the school site, a statement from the daily teacher regarding the provision of related services, including dates and/or as much specific time-frame information as possible

Student interview if appropriate

Observations

 Copies of the LEA's standard and monitoring procedures to ensure required services are provided, including case management activity and responsibilities.

# "Failure to Adhere to 30-Day Interim Placement Requirements"

#### Citation/Requirement

Education Code (EC) section (§) 56325(a-c): Whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled ... the administrator of a local program...shall ensure that the pupil is immediately provided an interim placement for a period not to exceed 30 days. The interim placement must be in conformity with an individualized education program, unless the parent or guardian agrees otherwise. The individualized education program implemented during the interim placement may be either the pupil's existing individualized education program, implemented to the extent possible within existing resources...or a new individualized education program ... Before the expiration of the 30-day period, the interim placement shall be reviewed by the [IEP] team and a final recommendation shall be made by the team ... The team may utilize information, records, and reports from the school District or county program from which the pupil transferred ...

#### FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to adhere to 30-day interim placement requirements
- Issue: Has the District implemented the IEP from the previous school?
- Questions typically asked by the investigator:

Is there a current IEP?

Does the District know about the IEP from the previous District?

Did the District implement an interim placement during the first thirty days?

Was the interim placement consistent with the IEP "within the District's existing resources?"

Did the District convene an IEP team meeting within thirty days?

? Does the District have policies and in place for handling interim placements?

<u>EVIDENCE</u> (The investigator will request this type of documentation from the appropriate party[s])

A copy of the student's IEP

- A determination of IEP requirements from the previous district
- Date exit from the previous district
- Date of enrollment in the current district

<u>EVIDENCE</u> (The investigator will request this type of documentation from the appropriate party[s])

- Documentation of the standard operating procedures for the District to ensure compliance.
   (i.e., copies of procedures in place to respond to a request for copies of records and/or access to a student's file; directives to staff; documentation of a tracking system in place to ensure the timeline requirements are met and names of responsible staff; evidence of training provided to staff)
- A copy of the request (i.e., copy of the written request or statement of parent/school personnel)
- Verification of the date of receipt of the request by the District (i.e., date-stamps; telephone/correspondence logs; fax confirmation; testimony)
- Verification of what records were requested and whether all maintained records were received.
   (i.e., site log; notation of parent and District personnel; return receipt; school log for pick-up; postmark; testimony)

# "Failure to Adhere to Procedural Safeguards - Timelines"

### FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to adhere to procedural safeguards timelines
- Issue: Were timeline requirements met?
- Questions typically asked by the investigator will stem from the specific timeline
  issue within the complaint. The most common timeline allegations relate to the
  provision of records and referral for special education/assessment, development of
  an IEP within required timelines, the provision of notices, and the timelines related
  to placement, suspension, expulsion, alternative placement.

<u>EVIDENCE</u> (The investigator will request this type of documentation from the appropriate party[s])

Note: There will be different investigation components based on the specific timeline addressed in the complaint. The following are not inclusive, but are examples of common issues, including typical questions asked by the investigator and typical examples of evidence:

Assessment Timelines

Evidence to determine appropriate dates (i.e., date of request for referral for special education and/or special education assessment; date of provision of a proposed assessment plan to the parent; date of receipt of a signed assessment plan by the district; dates of the assessment; date of the IEP team meeting and of the annual review)

A determination of what assessment was requested

Specific evidence related to a parent request for assessment: (i.e., copy of a written request; information/correspondence; telephone records/notes regarding a request made verbally; copies of the district procedures to respond to a request for an assessment that is made verbally; verification with staff [interview, evidence of training]; documentation regarding requests for assessment that result originate from the Student Study Team [SST] including dates and notes regarding the specific referral)

A statement of services provided during the interim placement and by whom; date of IEP team meeting—evidence as noted previously in this document)

Designated instruction and services (DIS) & Assembly Bill (AB) 2726 referral (Le., dates of referral, including any expanded IEP team meetings; date of response from the County Department of Mental Health; dates of any subsequent assessment plans and assessments and IEP team meetings; date of placement; for other DIS services—see previous section regarding failure to implement the IEP-related services)

Transition plan at age fourteen (i.e., student's date of birth; dates of IEP team meetings; copy of the IEP with required transition services language; copies of district policies, directives and staff development to implement the requirement)

Transition plan from infant, preschool, elementary, middle, secondary, out of special education (i.e., information as noted above—from infant to preschool; a description of the transition activity from DDS)

Transfer of rights at age of majority (i.e., copies of notices and copies of IEPs; demonstrated knowledge of staff regarding notice requirements and IEP participation; directives and evidence of training to staff)

# "Failure to Include all Required Members in the Individualized Education Program Team"

### Citation/Requirement

34 Code of Federal Regulations (34 CFR) section (§) 300,344: ... The public agency shall ensure that the IEP team for each child with a disability includes . .

#### FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to include all required members in the individualized education program team
- Issue: Was the IEP team convened with all required members?
- Questions typically asked by the investigator:

Is there a valid IEP?

Did the IEP team meeting take place? When? Who attended?

What was the purpose of the IEP team meeting?

Given the purpose, who were the required/appropriate (EC 56341[C]) IEP team members?

#### EVIDENCE (The investigator will request this type of documentation from the appropriate party[s])

- A copy of the notice sent to all parties regarding the IEP team meeting
- A copy of the signed IEP
- Statements/testimony from the participants at the IEP team meeting
- A copy of the procedures in place to maintain required members of the IEP team, including a description of the procedures in place to ensure representation when a required member cannot attend

U.S. DEPARTMENT OF EDUCATION SAN FRANCISCO OFFICE FOR CIVIL RIGHTS 50 UN PLAZA ROOM 239 SAN FRANCISCO, CALIFORNIA 94102 (415) 437-7700, TDD (415) 437-7786

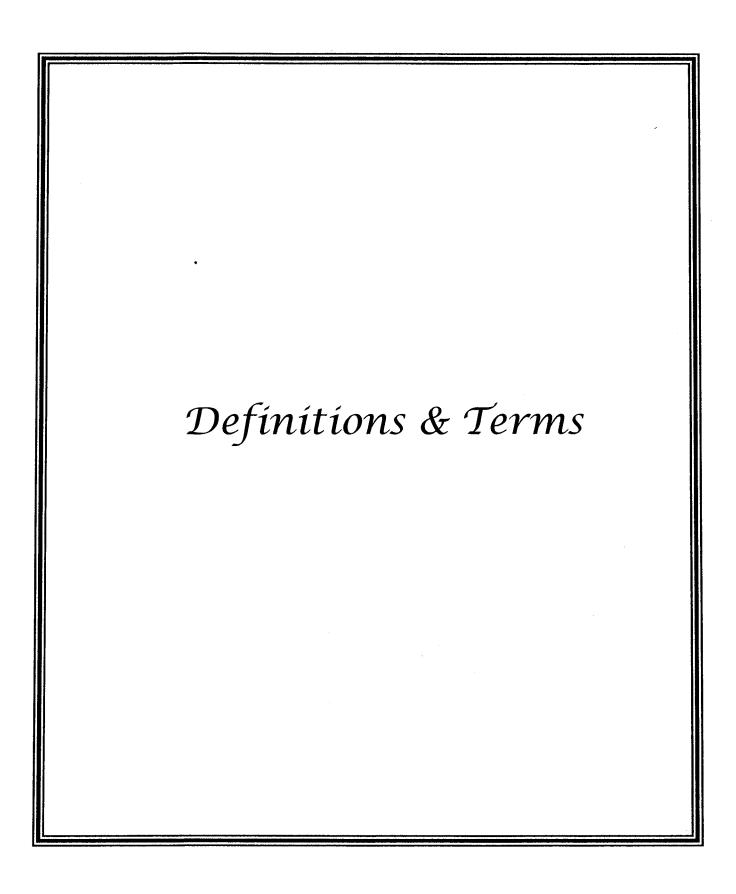
The Office for Civil Rights (OCR) enforces five federal statutes that prohibit discrimination in programs and activities receiving federal financial assistance from the Department of Education (ED). Discrimination on the basis of race, color, and national origin is prohibited by Title VI of the Civil Rights Act of 1964; sex discrimination, including sexual harassment, is prohibited by Title IX of the Education Amendments of 1972; discrimination on the basis of disability is prohibited by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990; and age discrimination is prohibited by the Age Discrimination Act of 1975. OCR also assists other departmental offices in ensuring that federal financial assistance administered by those offices is consistent with federal civil rights laws.

OCR has authority to enforce these laws in all programs and activities that receive funds from ED. These include programs and activities operated by institutions and agencies, such as state education agencies, elementary and secondary schools, colleges and universities, vocational schools, vocational rehabilitation agencies, libraries, and museums.

OCR investigates complaints filed by individuals, or their representatives, who believe that they have been discriminated against because of race, color, national origin, sex, disability, or age. It also initiates compliance reviews of recipient institutions and agencies, and monitors the progress in eliminating discriminatory practices of institutions and agencies that are implementing plans negotiated by OCR. OCR attempts to resolve compliance problems through negotiation. However, if unable to do so, OCR initiates the actions necessary to enforce the law.

OCR also offers technical assistance to help recipients and other customer groups voluntarily comply with civil rights laws and to inform citizens of their rights under these laws. As part of its technical assistance activities, OCR distributes information and materials and provides consultations on the requirements of the civil rights laws under its authority.

OCR maintains a headquarters office in Washington, D.C. and ten regional offices. For more information about the civil rights laws enforced by OCR, how to file a complaint, or how to obtain technical assistance, contact the San Francisco Regional Office for Civil Rights at the address listed above. The San Francisco Regional Office for Civil Rights conducts civil rights activities throughout the State of California.



IDEA 2004's Final Regulations

## 5 Acronyms and 5 Key Terms, Defined

This module looks at five acronyms and five key terms commonly used in special education. IDEA's definitions of all 10 are provided on this handout. The acronyms come first and are listed in alphabetical order. These are followed by the key terms, again in alphabetical order.

#### **FAPE**

# §300.17 Free appropriate public education

Free appropriate public education or FAPE means special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of \$\$300.320 through 300.324.

#### **IDEA**

#### Individuals with Disabilities Education Act

Editor's note: IDEA is the acronym for a law and has no definition per se. Public Law 108-446 is called the "Individuals with Disabilities Education Improvement Act of 2004." Its "short title" is Individuals with Disabilities Education Act.

#### **IEP**

## §300.22 Individualized education program

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with \$\$300.320 through 300.324.

#### LRE

## §§300.114—300.120 Least restrictive environment

Editor's note: IDEA's provisions with respect to LRE are not a "definition" per se, but they are nonetheless very important to know. These provisions appear in the final Part B regulations at \$\$300.114 through 300.120, as part of IDEA's provisions addressing "State Eligibility." The conceptual core of IDEA's LRE provisions are at \$300.114, cited below.

#### §300.114 LRE requirements.

- (a) General. (1) Except as provided in \$300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and \$\$300.115 through 300.120.
  - (2) Each public agency must ensure that—
- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and



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## 5 Acronyms and 5 Key Terms, Defined

- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- (b) Additional requirement—State funding mechanism—(1) General. (i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and
- (ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.
- (2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

#### TA&D

## Technical Assistance and Dissemination Network

Editor's note: IDEA's provisions with respect to the Technical Assistance and Dissemination (TA&D) network of OSEP do not contain a "definition" of TA&D but, rather, authorize the Secretary of Education to fund projects intended to improve the education of children with disabilities. In Section 663 of the statute (Public Law 108-446), the following authorization appears:

"(e) Linking States to Information Sources.— In carrying out this section, the Secretary shall support projects that link States to technical assistance resources, including special education and general education resources, and shall make research and related products available through libraries, electronic networks, parent training projects, and other information sources, including through the activities of the National Center for Education Evaluation and Regional Assistance established under part D of the Education Sciences Reform Act of 2002."

## 5 Key Terms, Defined

And to round out this handout on 10 key terms in special education you should know, here are the last 5 key terms defined, listed in alphabetical order.

## Term #6

## §300.8 Child with a disability

- (a) General. (1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
- (2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under \$\$300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

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## 5 Acronyms and 5 Key Terms, Defined

- (ii) If, consistent with \$300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.
- (b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in \$300.111(b) [see box below], include a child—
- (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
- (2) Who, by reason thereof, needs special education and related services
- (c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:
- (1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
- (ii) Autism does not apply if a child's educational performance is adversely affected primarily because

- the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.
- (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.
- (2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.
- (3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.



# Provisions at §300.111(b) Relevant to "Developmental Delay"

- (b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:
- (1) A State that adopts a definition of *developmental delay* under \$300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).
- (2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.
- (3) If an LEA uses the term developmental delay for children described in \$300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.
- (4) If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

## 5 Acronyms and 5 Key Terms, Defined

- (4)(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.
- (5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.
- (6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.
- (7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such

- severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.
- (8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
- (9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—
- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (ii) Adversely affects a child's educational performance.
- (10) Specific learning disability—(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- (ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional

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## 5 Acronyms and 5 Key Terms, Defined

disturbance, or of environmental, cultural, or economic disadvantage.

- (11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.
- (12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.
- (13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

## Term #7

# §300.34 Related services

### §300.34 Related services.

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in

- children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.
- (b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.
- (1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.
- (2) Nothing in paragraph (b)(1) of this section—
- (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.
- (ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
- (iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in \$300.113(b).
  - ▶ Editor's note: Individual definitions of the related services listed at \$300.34(a) are provided in IDEA at \$300.34(c) but have not been included on this handout due to their length.



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## 5 Acronyms and 5 Key Terms, Defined

### Term #8

## §300.39 Special education

- (a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including-
- (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
  - (ii) Instruction in physical education.
- (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—
- (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards:
  - (ii) Travel training; and
  - (iii) Vocational education.
- (b) Individual special education terms defined. The terms in this definition are defined as follows:
- (1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
  - (2) Physical education means—
  - (i) The development of—
  - (A) Physical and motor fitness;
  - (B) Fundamental motor skills and patterns; and
- (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

- (ii) Includes special physical education, adapted physical education, movement education, and motor development.
- (3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
- (i) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.
- (4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to-
- (i) Develop an awareness of the environment in which they live; and
- (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- (5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

### Term #9

## §300.42 Supplementary aids and services

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related

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## 5 Acronyms and 5 Key Terms, Defined

settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with \$\$300.114 through 300.116.

## Term #10

# §300.43 Transition services

- (a) *Transition services* means a coordinated set of activities for a child with a disability that—
- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—
  - (i) Instruction;
  - (ii) Related services;
  - (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- (b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

### And Here's A Bonus Term!

In addition to the brief definition of the term *individualized education program* at \$300.22, IDEA includes this much longer, much more descriptive definition at \$300.320.

## §300.320 Definition of individualized education program.

- (a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with \$\$300.320 through 300.324, and that must include—
- (1) A statement of the child's present levels of academic achievement and functional performance, including—
- (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
- (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- (2)(i) A statement of measurable annual goals, including academic and functional goals designed to—
- (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
- (B) Meet each of the child's other educational needs that result from the child's disability;
- (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

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## 5 Acronyms and 5 Key Terms, Defined

- (3) A description of—
- (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
- (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—
- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section:
- (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
- (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with \$612(a)(16) of the Act; and
- (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—

- (A) The child cannot participate in the regular assessment; and
- (B) The particular alternate assessment selected is appropriate for the child; and
- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.
- (b) *Transition services*. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—
- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.
- (c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.
- (d) Construction. Nothing in this section shall be construed to require—
- (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
- (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

## PART 13: Special education acronyms and glossary of terms

## The Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) is a federal law which requires (1) that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs, and to prepare them for further education, employment, and independent living; (2) that the rights of children with disabilities and parents of such children are protected.

Acronym	Term	Definition	
·	Adapted Curriculum	An alternative in the general education curriculum that includes the same	
		content and to some extent the same sequence as regular education.	
	Adaptation	Any modification to the classroom, instruction or materials that	
		strengthens the student performance or allows participation.	
	Adaptive Behavior	Usually measured by scales that identify how well a person manages within his or her own	
		environment, such as self-care tasks like dressing oneself or feeding oneself.	
ADL	Activities of	Activities that make a student independent in his or her	
	Daily Living	environment such as dressing, eating, and toileting.	
APE	Adapted Physical	A service provided by school districts consisting of physical education to students whose	
	Education	disabilities interfere with their participation in mainstream physical education.	
	Administrator/Designee	A representative designated by administration, other than a pupil's teacher.	
	Affective	A term that refers to emotions and attitudes.	
ADR	Alternative Dispute	An interest-based approach to resolving disagreements between parties. ADR includes	
	Resolution	mediation.	
	Annual Goals	A required component of an IEP. Goals are written for the	
		individual student and can be for a maximum of one year.	
ABA	Applied Behavioral	date can be for a maximum of one year.	
	Analysis	Behavior-analytic approach frequently used to teach student with autism. Discrete Trial	
		Training (DTT methods rely on ABA approach.)	
-	Asperger's	Asperger's Disorder is a category on the PDD spectrum. Typically, a student with	
		Asperger's may be relatively high-functioning in some areas, but have difficulties with	
		socialization and communication. A student with Asperger's Disorder may be eligible for	
		special education.	
	Assistive Technology	Refers to any item, piece of equipment, or product system-whether acquired	
	Device	commercially off the shelf, modified, or customized that is used to increase, maintain, or	
1		improve the functional capabilities of a student with a disability. (See Ed. Code, §	
		56020.5)	
ADHD	Attention Deficit	A condition identified as a medical diagnosis by the American Psychiatric Association's	
	Hyperactive Disorder	Diagnostic and Statistical Manual IV-Revised (DSM IV-R). Related to condition of	
		Attention Deficit Disorder (ADD). Although it is not an eligibility category under the	
İ		IDEA, children with this condition may be eligible for special education under other	
		categories or under Section 504.	
		(See Ed. Code, § 56339)	
ASD	Autism Spectrum	A group of disorders that includes autism and non-autistic pervasive development	
	Disorder	disorders (PDD) not otherwise specified (NOS), Fragile X Syndrome, Rett's Syndrome	
		and Childhood Disintegrative Disorder.	
	Assessment	Observation and testing of children to identify the strengths and weakness of the shill	
		and to determine progress in order to develop an appropriate education plan. Sometimes	
		called an evaluation. (See Ed. Code, § 56320, et seq.)	
	Behavior Interventions	The systematic implementation of procedures that results in lasting	
İ	1	positive changes in the individual's behavior. (Ed. Code, §§ 56520 through 56525.)	

BICM	Behavioral Intervention	A designated and the second se
2.011	Case Manager	A designated certificated school district SELPA staff member or other qualified personnel contracted by the school district that has been trained in behavioral analysis
BIP	Behavioral Intervention	and positive behavioral interventions. (See Ed. Code, § 56025.)
	Plan	A written document, which is developed when an individual exhibits a serious behavior
		problem that significantly interferes with the implementation of the goals of the individual's IEP. The behavioral intervention also have a second of the IEP.
	į	individual's IEP. The behavioral intervention plan becomes part of the IEP. LEAs are
		required to develop a BIP in some circumstances for students with behavioral problems.
CARD	Center for Autism &	(See Ed. Code, § 56523.)
	Related Disorders	One of many NPAs providing Lovaas type programs.
	Categorical Placement	Special Education programs in which at the state of the s
		Special Education programs in which students are grouped on the basis of their IDEA
		eligibility category. Alternative models include "non-categorical" placement and "cross-
	Chapter 26.5	categorical" placement.
	ompter 20.5	The section of the California Government Code that governs interagency responsibilities
		for the delivery of mental health services to eligible students under the IDEA and related
		California laws. The services are frequently referred to by the Assembly bills that created
		the laws, AB 3632 and AB 2726. (See Gov. Code, §§ 7570; 7572, subds. (a) & (c), 7576,
		subd. (a) [community mental health services provide the mental health services required
	Child Find	in order to provide a FAPEL)
	Cana Para	Also known as "search and serve." School districts are required to actively seek out and
		identify students within their boundaries who may be eligible for special education, and
		have a system in place to do so. (20 U.S.C § 1412(a)(3); Cal. Ed. Code, §§ 56300 through
	Cognitive	56302.)
CALP	Cognitive	A term that refers to reasoning or intellectual capacity.
CALI	Cognitive Academic	A level of competence required in oral and written language
CAC	Language Proficiency	related to literacy and academic achievement.
CAC	Community Advisory	A group of parents, community members, and district staff appointed by, and responsible
	Committee	to, the SELPA. It advises the SELPA in the development and implementation of the
		local plan for special education. It also assists in parent education and public
		involvement in the development of the local plan and supporting activities on behalf of
	<del>                                     </del>	students with disabilities.
	Community Based	When skills are taught at varied locations in the community rather than in the classroom.
		This is done in order to facilitate generalization and application.
	Comp Ed.	Compensatory education and/or related services
		provided to remedy a denial of FAPE.
	Continuum of Services	The range of services that must be available to the students of a school district so that
		they may be served in the least restrictive environment (LRE).
	Core Academics	The required subjects in middle and high school, usually
		English, reading or language arts, mathematics, science, foreign languages, civics and
		government, economics, arts, history, and geography. (20 U.S.C. § 1401(4), incorporating
		by reference 20 U.S.C. § 7801(11); 34 CFR § 300.10.)
	Cued Speech	Method of communication used by some persons with hearing impairments. It is used to
	_	reduce the ambiguities involved in lip reading. This method is caught in the controversy
		between teaching deaf children to rely on oral methods of communication or to use sign
		language.
	Deaf/Blind	Student with both hearing and vision disability. (20 U.S.C. § 1401(3)& (30); 34 CFR §
		300.8(c)(2).)
	Deaf/Hard of Hearing	Student who has a measurable bearing loss and with
	7	Student who has a measurable hearing loss, conductive or sensor neural, in
		either one or both ears. This limits the normal acquisition of speech and language
	Delay	through the ear. (20 U.S.C. § 1401(3)& (30); 34 CFR § 300.8(c)(3).)
į	,	Generally refers to intellectual or skills development not occurring within expected time
DIS	Designated Instruction	Transportation and and all all all
	and Services	Transportation and such development corrective and other supportive services as may be
	and octvices	required to assist a student with a disability to benefit from special education. Also
		known in 10 EA as related services. School districts are required to provide whatever
	L	DIS (other than medical care which is not for diagnostic purposes) a child needs in order

		to benefit from his or her special education program. (20 U.S.C. § 1402(26); 34 C.F.R. §
DTT	Discrete Trial Training	300.24; and Ed. Code, § 56363.)
	Due Process	Type of instruction for children with autism. Based upon ABA principles.
	2 40 1 100030	All procedural safeguards of public law and related laws and regulations. (20 U.S.C. 1415; 34 C.F.R. §104.36.)
EC	California Education	The body of statutes that governs education, including special education, in the State of
	Code	California.
EHA	Education for all	A federal law more commonly identified as P.L. 94-142. It became effective in 1975 and
	Handicap Children Act	has been significantly modified by the Individuals with Disabilities Education Act (1977).
ED	Emotionally Disturbed	An emotional problem that has existed for a period of time, to a marked degree, that
		adversely affects a child's educational performance. This is a category of eligibility for
	İ	special education. (20 U.S.C. § 1401(3)& (30); 34 C.F.R. § 300.8(c)(4)(i); Cal. Code Regs.
		tit. 5, § 3030, subd. (i).)
···-	Expedited Hearing	A provision of the IDEA that streamlines a due process hearing when the student has
	, ,	violated a code of student conduct. (20 U.S.C. § 1415(k), 34 C.F.R. § 300.532.)
ESD	Extended School Day	A provision for a special education student to receive instruction for a period longer that
		the standard school day. This sometimes includes "double" kindergarten, later
	-	afternoons, or earlier starting times.
ESY	Extended School Year	The special education program provided between school sessions when the IEP team
		determines they are needed to prevent regression of skills. ESY services are required to
		be included in the IEP and provided to the pupil if the pupil's IEP team determines, on
		an individual basis, that the services are necessary for the provision of a FAPE to the
		pupil. (Ed. Code, § 56345(b)(3), citing 34 CFR § 300.309.)
*****	Fair Hearing	A formal hearing that is requested by parents or school district personnel. Issues that
		may be considered under the fair hearing procedures are limited to eligibility, assessment,
		the individualized education program, and placement of individuals with exceptional
		needs. Also known as "due process hearing."
FERPA	Family Education Rights	A federal law that regulates the management of student records and disclosure of
	and Privacy Act	information from those records. FERPA mandates confidentiality of special education
		matters, including confidentiality of names of special education students. FERPA has its
		own administrative enforcement mechanism (not covered by due process hearings).
	Fine Motor	Functions which require tiny muscle movements. For example, writing or typing would
		require fine motor movement. Services typically associated with deficits in this area
EADE		include occupational therapy.
FAPE	Free Appropriate Public	Every school age child with a disability is entitled to an education that meets his/her
	Education	individual needs, which is at no cost to parents. Specifically, FAPE refers to special
		education and related services that (1) are provided at public expense, under public
		supervision and direction, and without charge; (2) meet the standards of the state
		educational agency, including the requirements of the federal regulations for the
		education of children with disabilities; (3) include an appropriate preschool, elementary,
		or secondary school education in the state involved; and (4) are provided in conformity
		with a qualifying individualized education program. (20 U.S.C. § 1401(9); 34 CFR §
FAA	Functional Analysis	300.17; Ed Code § 56040.)
17171	Assessment	Under California law, school districts must conduct an FAA when a student demonstrates
	Assessment	a "serious behavior problem," which is defined in title 5, Cal. Code of Regs., § 3001 and
FBA	Functional Behavioral	3052. An FAA is also referred to as a "Hughes Bill" assessment.
- ~	Assessment	Under federal law, school districts must conduct an FBA when the student's behavior
	1100001110111	impedes his or her own learning or that of others. (34 C.F.R. § 300.346.) FBAs may also
	Functional Curriculum	be required in relation to some disciplinary actions.
	Cuttletium	A curriculum focused on practical life skills and usually taught in community-based
		settings with concrete materials that are a regular part of everyday life. The purpose of
		this type of instruction is to maximize the student's generalization to real life use of
IEE	Independent	his/her skills.  A private evaluation typically obtained by parents when they do not a server in the last of the server in the last of the server in the last of the server in the last of the server in the server
	Educational Evaluation	A private evaluation typically obtained by parents when they do not agree with the results of an evaluation performed by the LEA. If parents disagree with an LEA's evaluation,
		the parents may seek an IFF at public expense (Cal. Ed. Cada 6.5/2004)
		the parents may seek an IEE at public expense. (Cal. Ed. Code, § 56329(b).)

IEP	Individualized Education	A written statement, mandated by low, that J.C.
	Program	or educational needs, and specifies annual goals, and evaluation and progress reporting schedule. (20 U.S.C. § 1414(d); 34 C.F.R. § 300.22; referring to 20 U.S.C. § 1400 to
	IEP Meeting	
	1EF Meeting	A gathering required at least annually under IDFA in which an IFP is developed 6
		student receiving special education. The IEP meeting usually includes the student's
IEP Team	T II II I TO I	patents and classroom and resource teachers
ter ream	Individualized Education	The team is composed of an administrator or his/her designee, the student's are in the
	Program Team	ther members may be a series of the parent of the members may be a series of the serie
		The student, those who have assessed the student and others as appropriate. The pro-
		Team is responsible for developing reviewing or reviewing on IED for a 1:11 1:1
		1
	Inclusion	placement for a student with a disability that in a classroom with typically developing
IROR		peers (nondisabled students). The ferm is related to mainstrooming and LDE
IFSP	Individualized Family	Similar to an IEP, but an IFSP is for eligible children from birth to age three. IFSP is a
	Service Plan	document that outlines the services to be delivered to families of infants and toddlers
	j	receiving early intervention services pursuant to Part C of the IDEA. (20 U.S.C. § 1436;
		34 C.F.R. § 300.24, incorporating by reference 20 U.S.C. § 1436;
TENTO		3 3 3 3 3 3 3 3 3 3 4 3 6.)
IDELR	Individuals with	Specialized full text reporting service publishes policy letter and administrative level
	Disabilities Education	actions as well as case law.
***************************************	Law Reporter	Let us case law.
IWENS	Individuals With	Individuals from infancy through 21 identified by an individualized education program
	Exceptional Needs	team as having a disability or condition that requires specialized instruction and/or
		services. (Ed. Code, § 56026.)
IAES	Interim Alternative	(IDEA 20 U.S.C. § 1415(k).) If a special education student violates a code of student
	Education Setting	conduct, school personnel may consider changing the educational placement of the
		student to an IAES. Most typically, a school will place a student in an IAES for up to 45
		days in special circumstances" discipline cases (weapons, drugs, serious bodily injury)
		pursuant to 20 U.S.C. § 1415(k)(1)(F).
· · · · · · · · · · · · · · · · · · ·	In-home interventions	Special education services delivered in a child's own home.
LD	Learning Disability	An eligibility category under IDEA and California Education Code. Technically known
		as "specific learning disability," as listed below. Includes dyslexia. (45 C.F.R. § 1308.14.)
LRE	Least Restrictive	A learning environment for a student with exceptional needs that meets his/her learning needs while providing maximum interests.
	Environment	needs while providing maximum interaction with the general school population in a
		manner appropriate to the needs of the student and it.
		manner appropriate to the needs of the student and his cher peers. IDEA requires that,
		to the maximum extent appropriate, children with disabilities shall be educated with children who are not disabled (20 U.S.C. \$ 1412(2)(5)(4), 24.6.75, and a second with
		children who are not disabled. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (2006); Ed
LEP	Limited English	Code, §§ 56031, 56342, subd. (b), & 56364, subd. (a).)  Also known as English language language (CLA).
	Proficiency	Also known as English language learner (ELL). Students whose primary language is
		other than English, who lack competence in the English language, and for whom
	1	linguistically appropriate goals, are developed. (20 U.S.C. § 1401(18); 34 C.F.R. §
LEA	Local Education Agency	A public hoard of education or other 11 in 1 in 1
	, ,	A public board of education or other public authority legally constituted within a state for
	į	
		stementary of secondary schools in a city, county township, school district, or all a
1	j	Position subdivision of a state, of for such combination of school district
ļ		are recognized in a state as an administrative agency for its public along
l		12.8. 4 SCHOOL (15) (20 1) S. ( 1401(19)(A) (10)(B) (10)(C) 24
	Lovaas	
		Type of program for students with autism. Program typically involved in program
ĺ	1	services to autistic preschoolers for forty hours per week
	Mainstreamine	Dased upon controversial research conducted by Dr. Ivar I owase at IICI A
	Mainstreaming	This term refers to IDEA's preference for the education of every shill in the l
		restrictive environment (LRE) for each student. This term has been most with
	[ :	refer to placement of disabled children in a regular classroom for a portion of each school

	Marifacti	IDDI com a company of the company of
	Manifestation Determination	IDEA 20 U.S.C. § 1415(k)(1)(E). Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an Individualized Educational Program (IEP) meeting with the purpose of determining whether the conduct was a manifestation of the
	3.6.11	student's disability. (34 C.F.R. \( \) 300.530, 300.532(2006).)
	Mediation	A voluntary dispute resolution process that is offered by OAH to all parties involved in special education disputes before OAH. (20 U.S.C. § 1415(e) and Ed. Code, §§ 56500.3
	Mediation Only	& 56503.)  A type of special education case in which the petitioner has requested mediation but not a
MR	Mental Retardation	due process hearing.  Student with significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (20 U.S.C. § 1401(3) &
MDC	Multidisciplinary	A requested gathering under IDEA and is the only body that can make certain
	Conference Multidisciplinary Team	Using a combination of the skills of several persons with specialized areas of training for
NCLB	No Child Left Behind	a common purpose, i.e. assessment of student to determine eligibility for services.  A federal school reform law that seeks to improve the quality of public schools around
NPA	Nonpublic Agency	the United States.  Private agency providing related services. Means a private, nonsectarian establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupil's educational program pursuant to an IEP. NPAs
NPS	Nonpublic Schools	A private, nonsectarian school that enrolls individuals with exceptional needs pursuant to
OT	Occupational Therapy	an IEP. NPS's are certified by CDE. (Ed. Code, § 56034,  A special education related service which addresses areas including fine motor skills, gross motor skills, self help skills, and activities of daily living, sensory integration and sensory
ОАН	Office of Administrative Hearings	OAH is an independent state agency designated by CDE to provide mediation and hearing services in special education cases. OAH conducts hearings and provides a
OCR	US Office of Civil Rights	neutral forum for fair and independent resolution of matters  An agency of the federal government's executive branch within the Department of Education. It is charged with enforcing a number of civil rights statutes including Section
OSEP	US Office of Special Education Programs	504.  A federal office charged with assuring that the various states comply with IDEA.
ОНІ	Other Health Impaired	This is a category of eligibility for special education services. It means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that :(1) is due to chronic or acute health problems such as asthma, ADD or ADHD, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (2) adversely affects a child's
ОН	Orthopedically Handicapped	educational performance. (20 U.S.C. § 1401(3) & (30); 34 C.F.R. § 300.8(c)(9).)  A severe orthopedic impairment that adversely affects a child's educational performance, including impairments caused by congenital anomaly (for example, clubfoot, absence of some member, and the like), disease (for example, poliomyelitis, bone tuberculosis, and the like), and other causes (for example, cerebral palsy, amputations, and fractures or burns that cause contractures). (20 U.S.C. § 1401(3) & (30); 34 C.F.R. § 300.8(c)(8).)
PT	Physical Therapy	This is a category of eligibility for special education services.  Means services provided by a qualified physical therapist. (34 C.F.R. § 300.34(c)(9).) PT consists of treatment of physical disabilities given by a trained physical therapist that includes the use of massage, exercise, etc., to help the person improve the use of bones, muscles, joints and nerves Physical therapy may be a related service, or DIS, under Ed.
		Code, § 56363.

	Developmental	Developmental Disorder IC 1711 F 1
	Disorders	Developmental Disorder. If a child displays some characteristics of autism but does not
	Dissiders	meet all the criteria, another possible diagnosis is PDD-NOS (not otherwise specified). A
PECS	Picture Exchange	child with PDD may be eligible for special education.
	Communication System	Program wherein children with limited communication ability use pictures of items to
	j	Teachers may also set up a picture schedule so the
	Placement	child will understand what his/her daily schedule is.
		California Code of Regulations, title 5, section 3042, defines "educational placement" as
		"that unique combination of facilities, personnel, location or equipment necessary to
		provide instructional services to an individual with exceptional needs," as specified in the
	Policy	IEP. (See also 34 C.F.R. § 104.35.)
		Refers to a procedure, philosophy or standard that has been formally adopted and is
	Present levels of	intended to assist in the governance and provision of programs in the school district.
	educational performance	A required IEP component
PWN	Prior written notice	
	a de la marie de la modec	When a school district proposes to initiate or change, or refuses to initiate or change, the
		identification, evaluation, or educational placement of a child, or the provision of a free
	1	appropriate public education (FAPE) to the child, the school district must first
		provide notice to the student's parents in writing, commonly referred to as "prior written
		notice." (20 U.S.C. § 1415(b)(3)(A); 34 C.F.R. § 300.503(a)(1)(2006); Ed. Code, §
	Referral	56500.4, subd. (a).)
	Refellar	The request to identify and assess a child's possible special education needs: a referral
		may be made by a parent, teacher, medical personnel, or anyone with specific knowledge
		of the child. Notice to a school district that a child may be in need of special education.
		If it it is the running of certain timelines for assessment and holding an IEP
RC	Regional Centers	meeting. (Ed. Code, § 56029.)
	regional centers	Community agencies throughout California which are mandated to provide services to
		individuals with qualifying disabilities. Regional Centers provide early intervention
		services to infants and toddlers with disabilities pursuant to part C of the IDEA, but do
		not provide special education services under Part B of the IDEA, the part of the IDEA
		which our due process hearings cover. Regional Centers cannot be parties in special
	Regression/Recoupment	education hearings; a separate hearing process exists.
	grossen, recoupment	The amount of loss of skills a child experiences over an instructional break (primarily
		summer vacation) and the amount of time it takes him/her to recover the lost skills.
		Standards for when regression and recoupment concerns require summer school are
	Resolution Session	developed in case law and in state and federal policy letters.
	recordion ression	Referring to IDEA 20 U.S.C. § 1415 (f)(1)(B). This is a required meeting of parents and
		"relevant" IEP team members. After a request for mediation and due process hearing is
		filed, school districts must arrange this session and attempt to cure any problems within
		30 days. If the school district does not cure the issue within 30 days, a hearing is
	Resource Placement	scheduled and the 45 day hearing timeline begins.
	resource rimerinent	(See RSP below). A special education placement for less than half a child's school day.
RSP	Resource Specialist	Such a classroom is usually called a "resource room."
	Program	Provides students with special education instruction for less than 50 percent of their day.
	Tiogram	A placement/service wherein a child receives individual or small-group instruction from a
· · · · · · · · · · · · · · · · · · ·	Respite Care	"resource specialist," who is credentialed special education teacher.
	respite Care	A service provided to the families of children who require extraordinary forms of care so
		that the family can take vacations, handle business affairs, and have some relief from the
		duties of caring for the child. (It is often provided by the Regional Centers. However, it
	Section 504	is not an educational service, so it should not arise under IDFA
	555001 504	Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits recipients of
		rederal funds from discrimination against persons with disabilities (Section 504)
		complaints must be filed with OCR. Due process hearings under the IDFA do not
		involve Section 304 claims, and OAH does not have jurisdiction to hear Section 504
	Severe Discrepancy	claims.)
	ocvere Disciepancy	Part of the criteria used to determine whether a child is eligible for special education due
,	k-	to a specific learning disability (SLD). California Code of Regulations, title 5, section

-		3030()
- CDI		3030(j) uses the phrase "severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in Section 56337(a) of the Education Code".
SDL	Severe Disorder of Language	Students who have a severe impairment in the ability to use or understand language.
SLD	Specific Learning Disabilities	A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. (20 U.S.C. § 1401(30); 34 CFR § 300.8(c)(10); Ed. Code, §§ 56337 & 56338.) SLD is an eligibility
SELPA	Special Education Local	Category for special education.  A service entity identified by the CDE and funded to provide special education services
	Plan Area	as described in the comprehension plan for special education, which is submitted by the agency to the California Department of Education. A SELPA is a government entity that provides special education services for the school districts that belong to the SELPA.
SDC	Special Day Class	(Ed. Code, § 56440.)  Special classes that serve pupils with similar and simil
		Special classes that serve pupils with similar and more intensive educational needs. SDCs may enroll pupils only when the nature or severity of the disability of the pupil is such that education in the regular classes with the use of supplemental aids and services cannot be achieved. (Ed. Code, § 56364.2.)
SEA	State Education Agency	i.e., California Department of Education. Means the state board of education or other agency or officer primarily responsible for the state supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the governor or by state law. (20 U.S.C. § 1401(32); 34 C.F.R. § 300.41.)
SLP	Speech and Language Pathologist	reperson eledentialed by the state to provide speech and language therapy services, which
SST	Student Success Team or Student Study Team	may be a related service, or DIS, under Ed. Code, § 56363.  A team of educators, convened at the request of a classroom teacher, parent, or counselor which designs in-class interventions techniques to meet the needs of a particular student, prior to developing an IEP.
	Standardized Tests	lests that have norms reflecting a larger population. Usually these are accounted by
	Stay Put	norms reflecting the performance of children throughout the country on the same tests.  Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented
	Supplementary Aids &	prior to the dispute arising.  Accommodations which could possible at a dispute arising.
	Services	Accommodations which could permit a student to profit from instruction in the least restrictive environment. They are required under IDEA. Specifically defined as aids, services, and other supports that are provided in regular education classes or other education related settings to enable individuals with exceptional needs to be educated with nondisabled children to the maximum extent appropriate in accordance with paragraph (5) of subsection (a) of Section 1412 of Title 20 of the United States Code. (20
	Surrogate Parent	U.S.C. § 1401(33); Ed. Code, § 56033.5.)  An individual appointed to exercise special education rights on behalf of children with disabilities who do not have a parent able to represent them, generally because the child is a ward of the court. (Cal. Gov. Code § 7579.5; 20 U.S.C. § 1415(b)(2).)
EACCH	Treatment and Education of Autistic and Related Communication Handicapped Children Therapeutic Day	A method of instruction used for children with autism.
		An instructional placement for students with emotional with emotional disturbance (ED)
<del></del>		in which aspects of treatment for the emotional difficulty are incorporated into the school

		program. Depending on the theoretical orientation of the school, these services may
		include psychotherapy, behavior management, positive peer culture, or other types of
		_l
	Total Communication	An instructional strategy in which teachers instruct children with severe hearing loss both
<del></del>		Dy Speaking to them and by using sign language
	Transition Planning	At a minimum, this is planning for adolescents' post-school lives and must begin by age
		16. This involves preparation of a document 18 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
		16. This involves preparation of a document called an Individual Transition Program
	}	(ITP). Good practice may involve planning for earlier transitions as well as incorporating
TBI	Traumatic Brain Injury	such plans into the child's IEP. (Ed. Code, § 56045, et seq.)
	Jami Injury	TBI is an acquired injury to the brain caused by an external physical force, resulting in
	1	total of partial functional disability or psychosocial impairment, or both, that advantage
		affects a student's educational performance. (20 U.S.C. § 1401(3)& (30); 34 C.F.R. §
	T-i-II-D	300.8(c)(12)
	Typically Developing	Preferred terminology used to identify age-level peers who do not have disabilities. Also
	Peers	sometimes referred to as general education peers or non-disabled peers
	Unilateral Placement	Placement by parents acting unilaterally, without approval of the school. A smileterally
		Placement does not constitute the student's stay but placement. Detents constitute the
		receive reimbursement for unilateral placements unless they provided the LEA with ten
		days advance notice of the placement.
VI	Visually Impaired	An impairment in vision that even with convert.
		An impairment in vision that, even with correction, adversely affects a student's
		educational performance. (20 U.S.C. § 1401(3) & (30); 34 C.F.R. § 300.8(c)(13).)

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